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**EXHIBIT A**

(Uber's Answer and Counterclaims to First Amended Complaint in Adversary Proceeding)

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:  
  
ANTHONY SCOTT LEVANDOWSKI,  
  
Debtor.

Case No. 20-30242 (HLB)  
  
Chapter 11

ANTHONY LEVANDOWSKI, an individual,  
  
Plaintiff,  
  
v.  
  
UBER TECHNOLOGIES, INC.  
  
Defendant.

**Adv. Pro. No. 20-03050 HLB  
[REDACTED]  
ANSWER TO DEBTOR'S FIRST  
AMENDED COMPLAINT FOR  
DECLARATORY RELIEF, SPECIFIC  
PERFORMANCE, DAMAGES, AND  
OBJECTION TO CLAIM; AFFIRMATIVE  
DEFENSES; AND COUNTERCLAIMS**

Defendant Uber Technologies, Inc. (“Uber”) asserts the following answers, affirmative defenses, and counterclaims to the complaint of Plaintiff Anthony S. Levandowski (“Levandowski”), as debtor and debtor in possession in the above-captioned chapter 11 case (the “Chapter 11 Case”), and as plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”), and states as follows:

### **NATURE OF CLAIM**

1. This is an objection to the allegations made by Uber Technologies, Inc. (“Uber”) in its Proof of Claim (Claim 8-1) filed on July 6, 2020 (the “Proof of Claim”) and an action to enforce the promises Uber made to Mr. Levandowski to induce him to sell to Uber his self-driving companies and technology and to lead its autonomous vehicle program.

**ANSWER:** Uber admits that Levandowski purports to object to allegations Uber made in its Proof of Claim (8-1) on July 6, 2020. Uber further admits that Levandowski purports to bring an action to enforce alleged promises he claims Uber made to Levandowski. Uber denies the remaining allegations in paragraph 1.

2. Mr. Levandowski is one of the world’s leading experts in autonomous vehicle technology. Mr. Levandowski is a star engineer who built one of the first self-driving motorcycles (which is in the Smithsonian today), one of the first self-driving cars, and one of the first self-driving freight trucks. He was a founding member of Google’s autonomous car initiative, Project Chauffeur, and played an integral part in driving the technology development for Project Chauffeur.

**ANSWER:** Uber admits that Levandowski is an engineer who has participated in projects related to the construction of self-driving vehicles. Uber lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2 and therefore denies the allegations.

3. Before his departure, Mr. Levandowski told Google about his intention to leave Google to start a new self-driving start-up.

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 and therefore denies the allegation.

4. Larry Page, the then-CEO of Google, threatened Mr. Levandowski and stated that if Mr. Levandowski worked for a competitor on self-driving technology, he would face very negative consequences. Mr. Levandowski was also aware that Mr. Page had great animosity toward Uber and Travis Kalanick, Uber’s then-CEO. In addition, Mr. Levandowski was aware that Mr. Page and other executives at Google viewed Uber as a very significant competitor.

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 and therefore denies the allegations.

1           5.       In early 2016, Mr. Levandowski left Google and helped start Ottomotto LLC (“Otto”) a self-driving trucking company.

2           **ANSWER:**   Uber admits that Levandowski left Google in early 2016. Uber further admits  
3 that Levandowski helped start Ottomotto LLC (“Otto”) and that Otto was a self-driving vehicle  
4 company. Uber denies the remaining allegations in paragraph 5.

5           6.       Uber expressed an interest in acquiring Otto to accelerate its self-driving program and  
6 to compete with Google, whom Mr. Kalanick believed to be an existential threat to Uber.

7           **ANSWER:**   Uber admits that it was interested in acquiring Otto. Uber denies the  
8 remaining allegations in paragraph 6.

9           7.       Because of Mr. Page’s threats and known hostility towards Uber, Mr. Levandowski  
10 insisted that Uber indemnify him against claims that may be brought by Google as a condition to  
entering into any relationship with Uber.

11           **ANSWER:**   Uber admits that Levandowski sought to have Uber indemnify him against  
12 certain potential claims and that Levandowski expressed concern that Google would sue him even if  
13 he did nothing wrong. Uber denies that Levandowski is entitled to indemnification. Uber lacks  
14 knowledge or information sufficient to form a belief as to the truth of the remaining allegations set  
15 forth in paragraph 7 and therefore denies the allegations.

16           8.       In fact, Mr. Levandowski explained to Uber multiple times that he believed Google  
17 would likely sue him if he joined Uber. Mr. Levandowski was particularly concerned because he did  
18 not have the ability to defend himself if one of the largest companies in the world, with essentially  
unlimited resources, came after him.

19           **ANSWER:**   Uber admits that, prior to executing the Indemnification Agreement,  
20 Levandowski and Uber discussed the prospect that Google may bring litigation against  
21 Levandowski. Uber further admits that Levandowski expressed concern that Google could sue him  
22 even if he did nothing wrong. Uber lacks knowledge or information sufficient to form a belief as to  
23 the truth of the allegations set forth in the second sentence of paragraph 8 and therefore denies the  
24 allegations. Uber denies the remaining allegations in paragraph 8.

25           9.       In addition, because Mr. Levandowski left Google to work on autonomous trucking,  
Mr. Levandowski conditioned the sale of Otto on Uber supporting his self-driving trucking business.

26           **ANSWER:**   Uber admits that on April 11, 2016, the Ottomotto Merger Agreement (“Otto  
27 Agreement”) and the Otto Trucking Merger Agreement (“Otto Trucking Agreement”) were each  
28 executed. Uber respectfully refers the Court to the Otto Trucking Agreement, attached as Exhibit 8,

1 and the August 17, 2016 amendment to that agreement, attached as Exhibit 9, for their complete and  
 2 accurate contents. Uber denies the remaining allegations in paragraph 9.

3 10. As part of the transaction for the acquisition of Otto, Uber agreed to indemnify Mr.  
 4 Levandowski for claims Google might raise against him. These claims included claims Google  
 5 might assert for breach of fiduciary duty, breach of the duty of loyalty, breaches of various restrictive  
 covenants, and trade secret misappropriation. **Exhibit A** is a redacted copy of the Indemnification  
 Agreement dated April 11, 2016 between Uber and Mr. Levandowski.

6 **ANSWER:** Uber admits that it entered into an Indemnification Agreement on April 11,  
 7 2016 with Levandowski, and that Exhibit A to the Amended Adversary Complaint is a redacted copy  
 8 of that Agreement. Uber respectfully refers the Court to the Agreement for its complete and accurate  
 9 contents. Uber denies the remaining allegations in paragraph 10. Answering further, Uber entered  
 10 into the Indemnification Agreement based on, among other things, Levandowski's unequivocal  
 11 representations that he had not breached any obligations to Google, that he had not taken any  
 12 confidential information or documents from Google, and that no Google documents or information  
 13 would be brought to Uber.

14 11. Under the Indemnification Agreement, Uber agreed to pay for Expenses incurred by  
 15 Mr. Levandowski—defined in the Agreement to include attorneys' fees and costs relating to defense  
 16 of any claim brought by Google, as well as any award or judgment in Google's favor. *See* Ex. A at  
 3, § 2.3.

17 **ANSWER:** Uber admits that the Indemnification Agreement includes at page 3 and § 2.3  
 18 language related to Expenses and respectfully refers the Court to the Agreement for its complete and  
 19 accurate contents. Uber denies the remaining allegations in paragraph 11.

20 12. As part of the acquisition of Otto, Uber also agreed to support Mr. Levandowski's  
 21 trucking business objectives by either creating a new business unit within Uber (wherein Mr.  
 Levandowski would have a leadership role) or allowing Mr. Levandowski to create a trucking  
 business outside of Uber.

22 **ANSWER:** Uber admits that on April 11, 2016, the Otto Agreement and the Otto Trucking  
 23 Agreement were each executed. Uber respectfully refers the Court to the Agreements for their  
 24 complete and accurate contents. Uber denies the remaining allegations in paragraph 12. Answering  
 25 further, Uber states that the Otto Trucking Agreement was terminated pursuant to its terms, that  
 26 prior to its termination, Levandowski voluntarily sold his interest in Otto Trucking LLC ("Otto  
 27 Trucking") to a third party, and that Levandowski has no legal right to enforce the terminated  
 28 Agreement.

13. After Uber acquired Otto, Mr. Page followed through on his threats against Mr. Levandowski. In October, 2016, Google initiated two arbitration proceedings against Mr. Levandowski. Mr. Levandowski timely requested indemnity from Uber under the Indemnification Agreement, and Uber accepted its obligations. Consequently, Uber paid for and controlled the defense of Mr. Levandowski for nearly three years. Initially, Mr. Levandowski was represented by the same counsel that represented Uber. During the course of a separate litigation, a trade secrets dispute with Waymo LLC, a Google affiliate, Uber's then-counsel determined it could not jointly represent Mr. Levandowski (or his company, Otto Trucking) and Uber. Uber subsequently selected and hired separate counsel for Mr. Levandowski. Uber continued to direct the defense strategy and continued to make payments for the cost of defense after replacement counsel was selected. Uber also exercised its right to direct and control Mr. Levandowski's defense of the arbitration proceeding through the final award and including all settlement discussions with Google.

**ANSWER:** Uber admits that in October 2016, Google initiated two arbitration proceedings against Levandowski (together, the "Google Arbitration"). Uber further admits that Levandowski thereafter requested indemnity from Uber pursuant to the April 11, 2016 Indemnification Agreement. Uber admits that it paid the legal expenses in connection with the two arbitration proceedings through September 25, 2019, the date the Arbitration Panel declared the arbitration hearing closed. Uber admits that Levandowski was represented in the arbitration proceedings by Morrison & Foerster LLP, and that Morrison & Foerster initially represented both Levandowski and Uber. Uber admits that after Google initiated *Waymo LLC v. Uber Technologies, Inc., et al.*, Case No. 3:17-cv-00939-WHA (N.D. Cal.) ("Waymo litigation"), Uber determined that Levandowski should have separate counsel. Uber denies that it directed and controlled Levandowski's defense of the arbitration proceeding through the final award, including all settlement discussions with Google. Uber denies the remaining allegations in paragraph 13.

14. After Mr. Levandowski relied on Uber's control and direction for years and after an unfavorable Interim Award issued, Uber purported to rescind the Indemnity Agreement and made clear that it would not pay for any additional Expenses incurred by Mr. Levandowski after September 25, 2016.

**ANSWER:** Uber admits that it notified Levandowski through counsel that the Indemnification Agreement was rescinded and that it would not make additional payments after September 25, 2019. Uber respectfully refers the Court to the August 30, 2019 and September 27, 2019 letters from Uber's counsel to Levandowski's counsel for their complete and accurate contents. Uber denies the remaining allegations in paragraph 14.

15. In addition, while in control of Mr. Levandowski's defense and settlement prospects with Google, Uber worked out its own settlement with Google's subsidiary, Waymo LLC ("Waymo") to resolve a trade secret dispute between them relating to the same underlying events. Upon information and belief, the terms of that settlement included an agreement that Uber would

1 never hire or work with Mr. Levandowski again, which resulted in Uber also reneging on its  
2 promises to support Mr. Levandowski's trucking business.

3 **ANSWER:** Uber admits that in February 2018 it, along with Otto, entered into a  
4 Settlement Agreement with Waymo LLC, Google LLC, and Alphabet, Inc. ("Google Settlement  
5 Agreement") in connection with a civil action that Waymo filed against Uber, Otto, and Otto  
6 Trucking asserting claims for violations of the Trade Secrets Act, violations of the California  
7 Uniform Trade Secrets Act, patent infringement, and violations of Section 17200 of the California  
8 Business and Professions Code. Uber respectfully refers the Court to the Google Settlement  
9 Agreement for its complete and accurate contents. Uber denies the remaining allegations in  
10 paragraph 15.

11 16. Uber's recently filed Proof of Claim has made the Indemnification Agreement, and  
12 Uber's actions related to its acquisition of Otto, central to this Chapter 11 Case.

13 **ANSWER:** Uber admits that it filed a Proof of Claim on July 6, 2020 in Bankruptcy  
14 Petition No. 20-30242. Uber denies the remaining allegations in paragraph 16.

15 17. In particular, the Proof of Claim alleges that because Uber purportedly rescinded the  
16 Indemnification Agreement, not only does Uber not have any obligation to indemnify Mr.  
17 Levandowski but it also is a creditor of Mr. Levandowski. Uber seeks payment for legal fees and  
18 costs it provided under the Indemnification Agreement and contribution for the settlements it has  
19 negotiated for its own benefit and the benefit of Mr. Levandowski's cofounder, the current lead of  
20 Uber's trucking business.

21 **ANSWER:** Uber admits that it filed a Proof of Claim on July 6, 2020 in Bankruptcy  
22 Petition No. 20-30242. Uber respectfully refers the Court to the Proof of Claim for its complete and  
23 accurate contents. Uber denies the remaining allegations in paragraph 17.

24 18. However, Uber asserts claims that, upon information and belief, Uber released as part  
25 of the settlement with Waymo.

26 **ANSWER:** Uber denies the allegations in paragraph 18.

27 19. Uber also has no basis to rescind the Indemnity Agreement. Uber has set forth  
28 numerous theories to back out of the deal it struck, but two issues appear to be core: (1) a claim that  
Mr. Levandowski engaged in fraud and (2) a claim that Mr. Levandowski has pled to one count of  
trade secret misappropriation in a criminal indictment filed by the United States Attorney.

**ANSWER:** Uber admits that it has asserted, among other things, that Levandowski  
engaged in fraud, and that Levandowski has pled guilty to one count of trade secret misappropriation  
in a criminal indictment filed by the United States Attorney. Uber denies the remaining allegations in  
paragraph 19.



20. First, there was no fraud. Uber was aware of Mr. Levandowski's conduct through the extensive investigation it conducted prior to and after entering into the indemnity agreement with him, and long before it purported to rescind. To the extent Uber claims it was unaware of certain facts, those facts were not material and were fully available to Uber had they cared to look more carefully at the materials it was provided by Mr. Levandowski. In fact, Mr. Levandowski repeatedly told Uber to search those devices for the most accurate information.

**ANSWER:** Uber admits that in March 2016, it engaged Stroz Friedberg, LLC ("Stroz") to conduct an independent investigation of Otto employees, including Levandowski. Uber denies the remaining allegations in paragraph 20.

21. Second, Mr. Levandowski did not make any misrepresentations regarding any theft of trade secrets. Mr. Levandowski has plead guilty to trade secret misappropriation with respect to one file he accessed after leaving Google. As for that one file, Uber knew the file's name, that Mr. Levandowski kept that file, that he accessed it after he left Google, the date he accessed it, and through its due diligence firm, the contents of that file.

**ANSWER:** Uber admits that Levandowski has pled guilty to Theft and Attempted Theft of Trade Secrets in violation of 18 U.S.C. § 1832(a)(1), (2), (3) & (4). *United States of America v. Anthony Scott Levandowski*, Case No. 3:19-cr-00377-WHA. Uber denies the remaining allegations in paragraph 21.

22. Mr. Levandowski therefore commenced the Adversary Proceeding to obtain declaratory relief as to the impact of Uber's purported rescission on the parties' respective rights and obligations, to enforce Uber's obligations arising from the Otto transaction, and to disallow the Proof of Claim.

**ANSWER:** Paragraph 22 asserts legal conclusions to which no response is required. To the extent a response is required, Uber denies the allegations in paragraph 22.

### **JURISDICTION AND VENUE**

23. The Adversary Proceeding arises in and relates to the Chapter 11 Case. The Court has jurisdiction to consider the Adversary Proceeding and the claims asserted by Mr. Levandowski against Uber herein pursuant to 28 U.S.C. §§ 157 and 1334; the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.); and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District Court for the Northern District of California. The parties also stipulated to have this dispute, and any others raised in Mr. Levandowski's arbitration demand and Uber's proof of claim be resolved in this Adversary Proceeding. *See* ECF No. 13.

**ANSWER:** Uber admits that the Adversary Proceeding relates to the Chapter 11 case and that the Court has jurisdiction to consider the Adversary Proceeding and the claims asserted by Levandowski pursuant to 28 U.S.C. 1334(b). Uber admits that the parties stipulated to have "all disputes between them" resolved before this Court as part of the Adversary Proceeding, including disputes raised in Levandowski's demand in arbitration and his Complaint in the Adversary



Proceeding, and those raised in Uber's Proof of Claim in the Chapter 11 case. Uber denies the remaining allegations in paragraph 23.

24. This is a core proceeding under 28 U.S.C. § 157(b) including, without limitation, under subsections (b)(2)(A), (B), (C), (K), and (O). Mr. Levandowski consents to the entry of a final order by the Court in connection with this Adversary Proceeding.

**ANSWER:** Uber admits that Levandowski's objection to Uber's Proof of Claim is denominated as a core proceeding under 28 U.S.C. § 157(b)(2)(B). Uber denies that the remaining claims set forth in this Adversary Proceeding are denominated as core proceedings pursuant to any of the subparts of 28 U.S.C. § 157(b)(2). Pursuant to Local Bankruptcy Rule 7012-1, Uber consents to the entry of final orders or judgments by the Bankruptcy Court.

25. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**ANSWER:** Uber admits that venue is proper before this Court pursuant to 28 U.S.C. § 1409(a) and this Court's July 29, 2020 Order Granting Stipulation to Withdraw Arbitration and Litigate Indemnity Dispute in Bankruptcy Court. (*See* Case No. 20-03050, Dkt. 13.) Pursuant to that Stipulation, Uber does not contest that venue is proper before this Court with respect to Levandowski's Amended Adversary Complaint. Uber denies the remaining allegations in paragraph 25.

### **FACTS**

#### **A. MR. LEVANDOWSKI ESTABLISHES HIS REPUTATION AS A PIONEER IN SELF-DRIVING CAR TECHNOLOGY**

26. Mr. Levandowski has had a lifelong fascination with robots and autonomous devices.

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 and therefore denies the allegations.

27. He earned his undergraduate and graduate degrees in Industrial Engineering and Operations Research at University of California, Berkeley ("U.C. Berkeley").

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and therefore denies the allegations.

28. In 2004, Mr. Levandowski participated in the Defense Advanced Research Projects Agency's ("DARPA") Grand Challenge, a prize competition for autonomous vehicles. He was 24 years old at the time.

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 and therefore denies the allegations.

29. The DARPA Grand Challenge was an effort to race robotic, computer-controlled vehicles between Los Angeles and Las Vegas. Mr. Levandowski and a team of engineers from U.C. Berkeley—working in Mr. Levandowski’s garage using crowd-sourced donations— submitted a self-driving, self-balancing, two-wheeled motorcycle. This motorcycle, Ghost rider, competed against well-funded submissions from Stanford University, Carnegie Mellon, and established companies. After performing well in several qualifying rounds, Ghost rider was selected as a contender for the DARPA Grand Challenge.

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 and therefore denies the allegations.

30. Ghost rider now sits in the Smithsonian Museum as one of America’s great innovations.

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 and therefore denies the allegations.

31. Mr. Levandowski’s Ghost rider entry caught the attention of many, including Dr. Sebastian Thrun, a former Stanford computer science professor who was also a participant in the DARPA Grand Challenge.

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and therefore denies the allegations.

32. Dr. Thrun recruited Mr. Levandowski to work for his mapping company, VuTool. VuTool was subsequently acquired by Google.

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 and therefore denies the allegations.

#### **B. MR. LEVANDOWSKI BUILDS GOOGLE’S SELF DRIVING CAR PROGRAM**

33. Mr. Levandowski joined Google in 2007 as part of a team hired to work on mapping with Dr. Thrun. Mr. Levandowski helped develop the technology for the Google service now known as Street View.

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 and therefore denies the allegations.

34. In approximately 2009, Dr. Thrun and Mr. Levandowski decided to launch a self-driving car program at Google. The program was named “Project Chauffeur.”

1           **ANSWER:** Uber admits that Levandowski was part of a program called Project Chauffeur  
2 while employed by Google. Uber lacks knowledge or information sufficient to form a belief as to the  
3 truth of the remaining allegations in paragraph 34 and therefore denies the allegations.

4           35. Project Chauffeur catapulted Google into the lead in autonomous driving when, in  
5 2010, cars using Google's self-driving technology were able to drive ten uninterrupted routes of 100  
6 miles. By 2012, Google had logged over 300,000 miles of autonomous driving. Mr. Levandowski  
7 was a key contributor in helping Google achieve these milestones. For his past contributions and to  
8 incentivize him going forward, Google invited Mr. Levandowski to participate in the Chauffeur  
9 Bonus Plan—an incentive plan that would pay members a percentage of the valuation of Project  
10 Chauffeur starting at the end of 2015—and gave him the highest initial allocation or individual  
11 earnout percentage of any member of the plan.

12           **ANSWER:** Uber admits that Levandowski was part of a program called Project Chauffeur  
13 while employed by Google and that he participated in the Chauffeur Bonus Plan. Uber lacks  
14 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
15 paragraph 35 and therefore denies the allegations.

16           36. Mr. Levandowski was an instrumental contributor to Project Chauffeur until he left  
17 Google in early 2016.

18           **ANSWER:** Uber admits that Levandowski was part of a program called Project Chauffeur  
19 while employed by Google and that he left Google in 2016. Uber lacks knowledge or information  
20 sufficient to form a belief as to the truth of the remaining allegations in paragraph 36 and therefore  
21 denies the allegations.

22           37. Mr. Levandowski would ultimately be paid over \$127 million by Google for his work  
23 on Project Chauffeur. The majority of that payment came in December 2015 and then in mid-  
24 August 2016, after Mr. Levandowski left Google.

25           **ANSWER:** Uber admits that the Arbitration Award in favor of Google and against  
26 Levandowski ("Arbitration Award") recounts that Levandowski was paid approximately \$127  
27 million by Google and that Levandowski had no right to receive that payment and was required to  
28 disgorge the same. Uber respectfully refers the Court to the redacted Arbitration Award for its  
complete and accurate contents, attached as Exhibit 1. Uber lacks knowledge or information  
sufficient to form a belief as to the truth of the remaining allegations in paragraph 37 and therefore  
denies the allegations.

1           **C.       MR. LEVANDOWSKI CONSIDERS LEAVING GOOGLE**

2           38.     For years, Google enjoyed its position as the leader in the self-driving space with no  
3     significant challengers. In 2015, Uber announced the launch of its own self-driving car initiative  
4     after acquiring a team of engineers from Carnegie Mellon University.

5           **ANSWER:**   Uber admits that in 2015, Uber formed a partnership with Carnegie Mellon  
6     University (“CMU”) that resulted in Uber hiring certain faculty members, researchers, and  
7     technicians from CMU. Uber lacks knowledge or information sufficient to form a belief as to the  
8     truth of the remaining allegations in paragraph 38 and therefore denies the allegations.

9           39.     After Uber’s announcement, there were many discussions within Google about how  
10    to compete with Uber. In those discussions, executives within Google expressed distaste and  
11    animosity towards Uber. Larry Page, one of Google’s founders and its then-CEO, was one of the  
12    individuals expressing such views.

13          **ANSWER:**   Uber lacks knowledge or information sufficient to form a belief as to the truth  
14    of the allegations in paragraph 39 and therefore denies the allegations.

15          40.     Uber’s founder and then-CEO, Travis Kalanick, testified that after Uber announced its  
16    entry into self-driving, Mr. Page communicated directly to Mr. Kalanick his displeasure about the  
17    increased competition:

18                 So when we acquired the [Carnegie] team and we were eventually -- we acquired it  
19                 because we couldn’t get meetings [with Google] and we couldn’t figure out if they  
20                 were still up for partnering. When we finally got the meeting, Larry made it very  
21                 clear that he was very upset with us and not happy that we were doing autonomy.  
22                 And everything we would get in terms of a signal from other people who knew him or  
23                 knew people around him was that generally Google was super not happy, unpumped,  
24                 about us doing this. And so when you go and hire a group of people, a large group of  
25                 people, acquire a company where a large group of people, you know, come from  
26                 there, you know, that competitive thing, those competitive juices get flowing, and that  
27                 means there is a higher likelihood of a lawsuit of some kind.

28          **Exhibit B** is an excerpt from Mr. Kalanick’s trial testimony in *Waymo LLC v. Uber Technologies, Inc.* (Kalanick Waymo 2/7/2018 trial testimony) at 717:4-17.

29          **ANSWER:**   Uber admits that the language quoted in paragraph 40 is an excerpt from Mr.  
30    Kalanick’s trial testimony in *Waymo LLC v. Uber Technologies, Inc.* and respectfully refers the Court  
31    to the trial transcript for its complete and accurate contents. Uber denies the remaining allegations in  
32    paragraph 40.

33          41.     Over time, Mr. Levandowski became increasingly dissatisfied with the direction of  
34    Project Chauffeur and the slow progress it was making after its initial successes. In 2015, Mr.  
35    Levandowski began to think about other self-driving opportunities.

36          **ANSWER:**   Uber lacks knowledge or information sufficient to form a belief as to the truth  
37    of the allegations in paragraph 41 and therefore denies the allegations.

42. After learning about Mr. Levandowski's discontentment at Google, Dr. Thrun introduced Mr. Levandowski to Mr. Kalanick at Uber. Upon meeting Mr. Levandowski, Uber repeatedly tried to recruit Mr. Levandowski and also encouraged him to leave Google to form a commercial partnership where he could supply self-driving technology to Uber as an outside technology vendor.

**ANSWER:** Uber admits that Dr. Thrun introduced Levandowski to Mr. Kalanick. Uber denies the allegations in the second sentence of paragraph 42. Uber lacks knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 42 and therefore denies the allegations.

43. Mr. Levandowski's Google colleagues, and more than one of his superiors, were aware that Mr. Levandowski was having discussions with Uber as he considered his future.

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 43 and therefore denies the allegations.

44. Simultaneously, in 2015, Lior Ron rejoined Google in a business role. Mr. Levandowski and Mr. Ron, who had met while working on Google Maps, began to discuss the problems with Project Chauffeur and ways in which the Project could be improved.

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 44 and therefore denies the allegations.

45. During those conversations, they also discussed new product markets, including self-driving trucks. As they explored this concept and brainstormed further, both became passionate about self-driving trucking. They were convinced that the trucking business could be disrupted by the addition of self-driving technology and that self-driving trucking technology could go to market much more quickly than passenger car technology. Mr. Levandowski began to include Mr. Ron in his discussions with Uber and others. Mr. Levandowski and Mr. Ron considered establishing a commercial vendor relationship with Uber to obtain funding for the trucking business.

**ANSWER:** Uber admits that Mr. Ron participated in discussions with Uber and Levandowski. Uber lacks knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 45 and therefore denies the allegations.

46. Toward the end of his time at Google, Mr. Levandowski also had several discussions with Mr. Page about his dissatisfaction with Project Chauffeur. During one of these discussions, Mr. Levandowski told Mr. Page that he wanted to create his own self-driving start-up outside of Google.

**ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 46 and therefore denies the allegations.

47. Mr. Page responded that if Mr. Levandowski did anything competitive with Google, he would face negative consequences. Because Google had bought several of Mr. Levandowski's outside businesses previously and because others had left Google to start new companies without objection from Google, Mr. Levandowski understood Mr. Page's threat to be about a large, well-funded competitor and not a startup.

1           **ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the  
2 allegations in paragraph 47 and therefore denies the allegations.

3           **D. MR. LEVANDOWSKI JOINS UBER AND OBTAINS INDEMNITY AGAINST CLAIMS**  
4           **GOOGLE MAY RAISE**

5           48. Mr. Levandowski left Google on January 27, 2016. He joined Otto, a self-driving  
6 trucking company and was credited as a co-founder.

7           **ANSWER:** Uber admits that Levandowski left Google on January 27, 2016. Uber admits  
8 that Levandowski joined Otto and that he was credited as a co-founder. Uber denies the remaining  
9 allegations in paragraph 48.

10          49. Soon after Mr. Levandowski joined Otto, Uber pushed for discussions to acquire  
11 Otto.

12          **ANSWER:** Uber admits that it discussed acquiring Otto with Levandowski. Uber denies  
13 the remaining allegations in paragraph 49.

14          50. As part of these discussions, Mr. Levandowski repeatedly told Uber that Google  
15 would see Mr. Levandowski working with Uber on consumer self-driving technology (instead of  
16 trucking) as a competitive act that would convert him from a friendly, start-up competitor to an  
17 enemy. Mr. Levandowski also told Uber that he feared that Google would sue him and seek  
18 recovery of the substantial amounts of money that had been paid to him or were owed to him, in  
19 particular, the proceeds from the Chauffeur incentive plan that Google owed him.

20          **ANSWER:** Uber admits that Levandowski raised concerns that Google would sue him  
21 without a valid basis for doing so. Uber denies the remaining allegations in paragraph 50.

22          51. In total, he had over a dozen conversations with executives at Uber about his  
23 concerns, including multiple conversations with Mr. Kalanick. In particular, Mr. Levandowski  
24 discussed the possibility that Google might sue him, Mr. Page's aggressiveness with competitors,  
25 and Mr. Page's dislike of Mr. Kalanick. In response, Mr. Kalanick stated that Uber was prepared to  
26 protect Mr. Levandowski from an aggressive assault by Google.

27          **ANSWER:** Uber admits that in early 2016, Levandowski and Uber discussed concerns  
28 related to Levandowski's former employer, Google, and the prospect that Google may bring  
litigation against Levandowski. Uber denies the remaining allegations in paragraph 51.

52. As a key and indivisible part of the transaction to sell Otto to Uber and have Mr.  
Levandowski join Uber, Uber agreed to indemnify Mr. Levandowski against any claims Google  
might assert against him. *See Ex. A.* The goal of the Indemnification Agreement was to indemnify  
Mr. Levandowski and others for "Pre-Signing Bad Acts," which were defined as any of the  
following acts that occurred prior to April 11, 2016:

"Bad Acts" shall mean (a) fraud committed by or on behalf of any member of the  
Company Group and/or committed by any Employee, (b) willful, intentional or  
deliberate conduct by an Employee or any member of the Company Group that



constitutes or directly leads or contributes to the infringement (direct or indirect) or misappropriation by an Employee or any member of the Company Group of any patents, copyrights, trademarks or trade secrets of such Employee's Former Employer, including, without limitation, taking, removing and/or copying software, product plans, or invention disclosures, in electronic or tangible form that are owned by such Employee's Former Employer, (c) willful and/or intentional breach by any member of the Company Group or any Employee of any fiduciary duty or duty of loyalty to such Former Employer and/or (d) willful and/or intentional breach by any member of the Company Group or any Employee of any lawful and enforceable non-solicitation, non-competition, confidentiality or other similar restrictive covenant or agreement between any Employee and such Employee's Former Employer.

"Pre-Signing Bad Acts" means any Bad Act committed prior to the Agreement Date.

*Id.* at 1-2, 3 (definition of "Bad Acts" and "Pre-Signing Bad Acts").

**ANSWER:** Uber admits that the language quoted in paragraph 52 appears in the April 11, 2016 Indemnification Agreement and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 52. Answering further, Uber states that Levandowski is not entitled to indemnification.

53. Section 2.1 outlined the scope of the indemnity for these Pre-Signing Bad Acts:

(a) ***Purchaser will indemnify and hold harmless each Diligenced Employee*** and the Company Group, ***to the maximum extent permitted by applicable Law*** (subject to the limitations and exclusions set forth herein), from and against any and ***all Expenses incurred by such Diligenced Employee*** or any member of the Company Group, as applicable, arising out of any claim brought or threatened in writing by any Former Employer of such Diligenced Employee against any member of the Company Group or such Diligenced Employee, as applicable, arising out of or alleged to arise out of: (i) the infringement (direct or indirect) or misappropriation by such Diligenced Employee or any member of the Company Group of any intellectual property, including any patents, copyrights, trademarks or trade secrets, of such Diligenced Employee's Former Employer, (ii) breach by such Diligenced Employee of such Diligenced Employee's fiduciary duty or duty of loyalty to such Diligenced Employee's Former Employer, and/or (iii) breach by such Diligenced Employee of any non-solicitation, non-competition, confidentiality or other similar restrictive covenant or agreement between such Diligenced Employee and such Diligenced Employee's Former Employer (each, subject to Section 2.1(b) below, an "Indemnified Claim", and, collectively, the "Indemnified Claims")

*Id.* at § 2.1(a) (emphasis added).

**ANSWER:** Uber admits that the language quoted in paragraph 53 appears in the April 11, 2016 Indemnification Agreement and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 53. Answering further, Uber states that Levandowski is not entitled to indemnification.



54. “Expenses” is defined in the Indemnification Agreement to include, among other costs, reasonable attorneys’ fees, costs of defense, any judgments, awards or damages, and interest incurred:

“Expenses” means (a) any expense, liability, or loss, including reasonable attorneys’ fees, mediation fees, arbitration fees, expert witness fees, vendor fees, costs (such as witness fees, duplication charges, data storage fees, filing fees, travel and meals), (b) any judgments, fines, bonds, penalties, damages, awards, and amounts paid or to be paid in settlement, and (c) any interest, assessments, taxes or other charges imposed on any of the items in part (a) and (b) of this definition, in each case, that is out-of-pocket and documented; provided, that Expenses shall exclude special, consequential, indirect, exemplary or punitive damages, unless such Expenses were specifically awarded in a Final Judgment.

*Id.* at 3.

**ANSWER:** Uber admits that the language quoted in paragraph 54 appears in the April 11, 2016 Indemnification Agreement and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 54. Answering further, Uber states that the scope of permissible indemnification is limited by applicable law.

55. The only limitations on Uber’s indemnification obligations with respect to “Pre-Signing Bad Acts” are found in Section 2.1(b)(ii)). That section reads:

(b) Notwithstanding anything herein to the contrary, ***an Indemnified Claim shall not, regardless of whether the Closing occurs, include***, and none of Parent, Purchaser or any of their respective Affiliates shall have any obligation hereunder to indemnify the Company Group or any Diligenced Employee in respect of, any:

(ii) ***claims that have been determined by a Final Judgment to arise or result from any Pre-Signing Bad Acts*** committed by or on behalf of any member of the Company Group by a Diligenced Employee and/or committed by any Diligenced Employee that reasonably arise or result from any facts, circumstances, activities or events arising prior to the date hereof that ***either (A) were not truthfully disclosed by the Diligenced Employees to the Outside Expert in response to relevant inquiries*** in connection with the due diligence performed by the Outside Expert ***or (B) were not contained or reflected in the due diligence materials provided by the Diligenced Employees*** to the Outside Expert.

*Id.* at § 2.1(b)(ii) (emphasis added).

**ANSWER:** Uber admits that the language quoted in paragraph 55 appears in the April 11, 2016 Indemnification Agreement and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies that the language quoted in paragraph 55 constitutes the “only limitations” on Uber’s indemnification obligations. Uber denies the remaining allegations in paragraph 55.

56. The Indemnification Agreement was structured to ensure that Mr. Levandowski would not be left unprotected against Google, which had inexhaustible resources to attack Mr. Levandowski. Mr. Levandowski would not have entered into the transaction to sell Otto to Uber without Uber's indemnity promise.

**ANSWER:** Uber admits that Levandowski expressed concern about Google's use of virtually inexhaustible resources to attack him without basis, but denies the remaining allegations in the first sentence of paragraph 56. Uber lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 56 and therefore denies the allegations.

57. The Indemnification Agreement was structured so that Uber would indemnify Mr. Levandowski first and could only seek recovery from him for Expenses improperly paid (if any) after any matters initiated by Google had concluded. Under Section 2.3 of the Indemnification Agreement, the parties specified a procedure by which Mr. Levandowski would notify Uber about Expenses and receive payment.

### 2.3. Expenses

(a) Upon receipt of a written request for the advancement of Expenses incurred by an Indemnified Person arising out of any Indemnified Claim and reasonable documentation evidencing such Expenses, Purchaser shall pay, or cause to be paid, to such Indemnified Person the amount of such Expenses within [redacted] of such request.

*Id.* at § 2.3.

**ANSWER:** Uber admits that the language quoted in paragraph 57 appears in the April 11, 2016 Indemnification Agreement and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 57. Answering further, Uber denies that Levandowski is entitled to indemnification.

58. If Uber denied a request for advancement of Expenses or otherwise failed to pay an Expense, Uber agreed that Mr. Levandowski could initiate arbitration proceedings to enforce Uber's obligations or seek specific performance of Uber's obligations. Ex. A at §§ 2.3, 3.11

**ANSWER:** Uber admits that sections 2.3 and 3.11 appear in the Indemnification Agreement and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 58.

59. The parties also agreed that Mr. Levandowski could pursue specific performance in the event Uber refused to advance Expenses, including proceedings in San Francisco state or federal courts where both parties submitted to jurisdiction.

**3.11 Specific Performance.** Except as set forth in this Agreement, the rights and remedies of the Parties specified shall be cumulative (and not alternative). Each of the Parties agrees that *this Agreement is intended to be legally binding and specifically enforceable* pursuant to its terms and that Purchaser and the *Indemnified Persons would be irreparably harmed if any of the provisions of this Agreement are not performed in accordance with their specific terms* and that monetary damages

would not provide adequate remedy in such event. Accordingly, in addition to any other remedy to which a nonbreaching Party may be entitled at law, ***a non-breaching Party shall be entitled to seek injunctive relief to prevent breaches of this Agreement and to specifically enforce the terms and provisions hereof.***

*Id.* at § 3.11 (emphasis added); *see also id.* at § 3.5.

**ANSWER:** Uber admits that the language quoted in paragraph 59 appears in the April 11, 2016 Indemnification Agreement and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 59.

#### **E. UBER ACQUIRES OTTO**

60. As part of the indemnification process, Mr. Levandowski agreed to be interviewed by Uber's due diligence and risk management firm, Stroz Friedberg, LLC ("Stroz"). He also provided over 35 of his devices and gave access to over ten email and other types of accounts to Stroz for examination. To this day, Uber, through Stroz, continues to be in possession of Mr. Levandowski's devices (other than his cell phone at the time) and images of his accounts.

**ANSWER:** Uber admits that in March 2016, it engaged Stroz to conduct an independent investigation of Otto employees, including Levandowski. Uber admits that Stroz collected a number of devices from Levandowski and that Levandowski gave Stroz access to a number of accounts. Upon information and belief, Uber admits that Stroz is still in possession of most of those devices and maintains static images of those accounts. Uber denies that it is in possession of Levandowski's devices and images of his accounts. Uber denies the remaining allegations in paragraph 60.

61. The Stroz /Uber investigation of Mr. Levandowski uncovered a great number of facts related to potential claims that might be brought by Google but was, by Stroz's own admission, incomplete. In early April 2016, while Stroz' was conducting its investigation, Uber executed the Indemnification Agreement.

**ANSWER:** Uber admits that in March 2016, it engaged Stroz to conduct an independent investigation of Otto employees, including Levandowski. Uber admits that the Indemnification Agreement was executed on April 11, 2016, and that the final Stroz written summary report had not been completed at that point. Uber denies the remaining allegations in paragraph 61. Answering further, Uber received preliminary findings from Stroz prior to April 11, 2016.

62. As Stroz summarized, Uber requested preliminary information regarding the investigation "in the lead-up to Uber's signing of an agreement to purchase Otto and "long before the investigation was completed." Stroz had provided Uber with preliminary information that included Stroz's draft memo from Mr. Levandowski's interviews and access reports showing that Mr. Levandowski retained thousands of Google files, and had accessed hundreds of Google documents after he left Google, including several that were identified by Mr. Levandowski as relating to self-driving. The interview memo remained in draft form and Mr. Levandowski's counsel reserved his rights as to the accuracy of the information in the memo.

1           **ANSWER:** Uber admits that it engaged Stroz to conduct an independent investigation of  
2 Otto employees, including Levandowski. Uber admits that Stroz provided a draft memo to Uber  
3 dated April 2, 2016 that discussed its interviews of Levandowski. Uber admits that the final Stroz  
4 report states that counsel reserved their clients' rights with respect to accuracy in the drafts of the  
5 interview memos. Uber denies the remaining allegations in paragraph 62. Answering further,  
6 Levandowski represented to Uber that he had retained Google confidential information after he left  
7 Google because he wanted to be able to demonstrate to Google the work he had done to earn a bonus  
8 that he expected to receive.

9           63. The Stroz draft interview memo contained nine pages of summaries of Mr.  
10 Levandowski's interactions and discussions with Google employees about his plans to start a  
11 company outside of Google, including summaries of one-on-one discussions and larger gatherings at  
his house.

12           **ANSWER:** Uber admits that Stroz prepared a draft memo of its interview of Levandowski  
13 and respectfully refers the Court to the memo for its complete and accurate contents. Uber denies the  
14 remaining allegations in paragraph 63.

15           64. Uber pushed for the entire transaction to proceed to closing knowing that Stroz had  
not completed its investigation.

16           **ANSWER:** Uber admits that it signed the Indemnification Agreement, the Otto  
17 Agreement, and the Otto Trucking Agreement before receiving Stroz's final written summary report.  
18 Uber denies the remaining allegations in paragraph 64. Answering further, Uber received  
19 preliminary findings from Stroz prior to April 11, 2016.

20           65. On April 11, 2016, Uber executed several documents to complete this transaction,  
21 including the Indemnification Agreement, the Otto Agreement and Plan of Merger (the "Otto  
22 Agreement"), and the Otto Trucking LLC Agreement and Plan of Merger (the "Otto Trucking  
Agreement"), which gave Uber an option to acquire a second company created by Mr. Levandowski  
and Mr. Ron.

23           **ANSWER:** Uber admits that on April 11, 2016, the Indemnification Agreement, the Otto  
24 Agreement, and the Otto Trucking Agreement were each executed. Uber refers the Court to the  
25 Agreements for their complete and accurate contents. Uber denies the remaining allegations in  
26 paragraph 65.

27           66. Stroz did not issue a report until August 5, 2016, almost four months after it signed  
28 the Otto acquisition documents.

1           **ANSWER:** Uber admits that Stroz provided Uber with a final written summary report on  
 2 August 5, 2016 (“Stroz Report”). Uber denies the remaining allegations in paragraph 66.

3           67. The Stroz report disclosed numerous facts, including the following:

4           During his interview, Levandowski informed Stroz Friedberg that he: (a) possessed  
 5 Google information; (b) met with a number of Google employees about joining his  
 6 start-up company; (c) met with Uber executives, while employed at Google, about  
 7 forming a new company; and (d) destroyed highly confidential Google proprietary  
 8 information he had stored on five disks on his personal Drobo 5D, including source  
 9 code, files, and software pertaining to self-driving cars.

10           **ANSWER:** Uber admits that the language quoted in paragraph 67 appears in the Stroz  
 11 Report and respectfully refers the Court to the Stroz Report for its complete and accurate contents.  
 12 Uber denies the remaining allegations in paragraph 67. Answering further, Levandowski later  
 13 represented to Uber that he had retained Google confidential information after he left Google  
 14 because he was worried that Google would not pay him his bonus and wanted to demonstrate the  
 15 work he had done to earn that bonus.

16           68. Stroz reported that Mr. Levandowski’s devices demonstrated that during his time at  
 17 Google, he downloaded documents and files relating to Project Chauffeur.

18           Stroz Friedberg’s analysis also identified relevant files that were accessed on  
 19 Levandowski’s personal laptop and subsequently deleted between September 1, 2015  
 20 and March 22, 2016. An example of this activity includes system logs indicating that  
 21 on December 14, 2015, approximately 24,000 files were located within the folder  
 22 path “/Users/Anthony/Desktop/boards/chauffeur-svn/.” These same system logs  
 23 indicate that on December 14, 2015, approximately 24,000 files were located within  
 24 the folder path “/users/Anthony/.Trash/boards/chauffeur-svn/.” A review of the names  
 25 of the deleted files indicates that they were source code and electronic design files  
 26 relating to driverless cars.

27           **ANSWER:** Uber admits that the language quoted in paragraph 68 appears in the Stroz  
 28 Report and respectfully refers the Court to the Stroz Report for its complete and accurate contents.  
 29 Uber denies the remaining allegations in paragraph 68. Answering further, Levandowski later  
 30 represented to Uber that he had retained Google confidential information after he left Google  
 31 because he was worried that Google would not pay him his bonus and wanted to demonstrate the  
 32 work he had done to earn that bonus.

33           69. It also reported that Mr. Levandowski downloaded Chauffeur files shortly before his  
 34 departure from Google and had accessed them following his departure from Google.

35           Stroz Friedberg also identified access by Levandowski to several cloud storage  
 36 repositories. A review of the internet history shows access to Google Docs on



1 January 26 2016, the day of Levandowski's resignation. In particular, he accessed a  
2 file named "Chauffeur TL weekly updates - 04 2015 – Google Sheets." Further  
3 review of the laptop identified a file with the same name in Levandowski's  
4 Downloads folder, which is attached as Exhibit 27. The file was created on January  
5 1, 2016 and last accessed on February 24, 2016 (about a month after his departure  
6 from Google).

7 **ANSWER:** Uber admits that the language quoted in paragraph 69 appears in the Stroz  
8 Report and respectfully refers the Court to the Stroz Report for its complete and accurate contents.  
9 Uber denies the remaining allegations in paragraph 69. Answering further, Levandowski later  
10 represented to Uber that he had retained Google confidential information after he left Google  
11 because he was worried that Google would not pay him his bonus and wanted to demonstrate the  
12 work he had done to earn that bonus.

13 70. Stroz reported facts regarding hiring of Google employees.

14 While employed at Google, Levandowski had a number of one-on-one meetings and  
15 four group meetings with several Google/Chauffeur employees about joining his  
16 start-up company. The one-on-one meetings occurred at work with over 20  
17 Google/Chauffeur employees (during individual update meetings or around the Google  
18 campus), coffee shops, restaurants, homes, or telephonically. There were also four  
19 group meetings, two of which occurred with small groups of Google and/or  
20 Chauffeur employees at a barbeque at Levandowski's house and on a ski trip to Lake  
21 Tahoe. Two larger group meetings took place at Levandowski's house in  
22 approximately December 2015 and January 2016. These meetings included  
23 approximately 15 to 20 Google and non-Google employees. . . .

24 Offers of employment were made to at least 15 Chauffeur team employees by  
25 Levandowski and/or his Ottomotto team before and after his departure from Google.  
26 According to Levandowski, as of the dates of his interview on March 22 and March  
27 23, 2016, Ottomotto had approximately 30 employees, 16 of whom were former  
28 Google employees.

29 **ANSWER:** Uber admits that the language quoted in paragraph 70 appears in the Stroz  
30 Report and respectfully refers the Court to the Stroz Report for its complete and accurate contents.  
31 Uber denies the remaining allegations in paragraph 70.

32 71. Stroz included as an exhibit to its report the draft memorandum of its interview with  
33 Mr. Levandowski, which included a list of some of his side projects for which he had an ownership  
34 interest, but did not include any discussion of this memo in its main report. In addition, Mr.  
35 Levandowski's devices and accounts also contained extensive information about a company named  
36 Odin Wave/Tyto, Mr. Levandowski's estate planning, and various investments.

37 **ANSWER:** Uber admits that a redacted interview memorandum of Levandowski was  
38 attached to the Stroz Report that was provided to Uber. Uber lacks knowledge or information  
39 sufficient to form a belief as to the truth of the allegations contained in the last sentence of paragraph

71 and therefore denies those allegations. Uber denies the remaining allegations in paragraph 71. Answering further, Uber states that Levandowski's counsel controlled what information Stroz could share with Uber from Stroz's interviews of the Otto employees and reviews of data provided to Stroz. Stroz did not provide Uber copies of all of the exhibits to its summary report, and Uber did not have access to Levandowski's devices and accounts. To the extent that any of Levandowski's devices contained information related to Tyto, Uber did not have access to and was not told about that material, and Levandowski did not disclose that information to Stroz. To the contrary, when asked by Stroz what "side projects" he had done while at Google, he did not identify Tyto.

72. Stroz noted discrepancies in what Mr. Levandowski recalled and what Stroz discovered on Mr. Levandowski's devices.

Our forensic examination of Levandowski's devices and accounts corroborates his assertion that he stored and accessed Google files on his personal laptop in folders labeled "Chauffeur" and "Google." However, contrary to his belief that there were no or few Google e-mails on his laptop, Stroz discovered approximately 50,000 Google work e-mail messages that were downloaded onto Levandowski's computer on September 20, 2014. Ten of those e-mails were last accessed between September 1, 2015 and January 28, 2016. It is difficult to believe that Levandowski was not, prior to his interview, fully aware of the extent of the data that he had retained.

**ANSWER:** Uber admits that the language quoted in paragraph 72 appears in the Stroz Report and respectfully refers the Court to the Stroz Report for its complete and accurate contents. Uber denies the remaining allegations in paragraph 72.

73. Stroz also called to Uber's attention Mr. Levandowski's deletion of files and text messages, as well as its decision not to investigate these deletions further.

Many of these deletions may have been good faith attempts by Levandowski to purge retained Google material from his devices in accordance with his obligation not to retain confidential Google data. However, by March 2016, Levandowski was aware that Stroz Friedberg was going to implement a process to preserve, identify, and potentially remediate retained Google material from his devices. At that point, the better course would have been to let that process control. In addition, there was an effort by Levandowski and his Ottomotto colleagues to delete texts in real time. Stroz Friedberg did not re-interview Levandowski or others regarding their reason for this practice.

**ANSWER:** Uber admits that the language quoted in paragraph 73 appears in the Stroz Report and respectfully refers the Court to the Stroz Report for its complete and accurate contents. Uber denies the remaining allegations in paragraph 73.



74. Despite and with full knowledge of Stroz's findings, on August 18, 2016, Uber closed the acquisition of Otto and publicly announced that it was acquiring the company and working with Mr. Levandowski.

**ANSWER:** Uber admits that in August 2016 it closed the acquisition of Otto and that a press release was issued on August 18, 2016 by Uber and respectfully refers the Court to that press release for its full contents. Uber denies the remaining allegations in paragraph 74.

75. In that press release, Uber touted Mr. Levandowski's skills and experience, calling him "one of the world's leading autonomous engineers" and a "prolific entrepreneur with a real sense of urgency." Uber further stated that it now had "one of the strongest autonomous engineering groups in the world [and] self-driving trucks and cars that are already on the road thanks to Otto and Uber's Advanced Technologies Center in Pittsburgh." **Exhibit C** is a true and correct copy of Uber's August 18, 2016 press release found at <https://www.uber.com/en-FR/newsroom/rethinking-transportation-2/>.

**ANSWER:** Uber admits that it issued a press release on August 18, 2016 and that the language quoted in paragraph 75 appears in the press release. Uber respectfully refers the Court to the press release for its complete and accurate contents. Uber denies the remaining allegations in paragraph 75.

#### **F. GOOGLE INITIATES ARBITRATION AGAINST MR. LEVANDOWSKI**

76. On October 28, 2016, nine months after Mr. Levandowski resigned from Google and only two months after Uber announced its acquisition of Otto, Google filed and served two arbitration demands on Mr. Levandowski alleging breach of fiduciary duty, breach of his employment agreements relating to misuse of confidential information, violation of his nonsolicitation obligations, and breach of other noncompetition and nonsolicitation obligations. **Exhibit D** contains true and correct copies of Google's arbitration demands without exhibits.

**ANSWER:** Uber admits that Google filed arbitration demands against Levandowski on October 28, 2016 and respectfully refers the Court to the arbitration demands attached as Exhibit D to Levandowski's Amended Adversary Complaint for their complete and accurate contents. Uber denies the remaining allegations in paragraph 76.

77. Although alleging breach of different agreements and/or duties, both arbitration demands focused on the same set of underlying, and as the later arbitration panel determined, "interrelated" facts.

**ANSWER:** Uber admits that Google filed arbitration demands against Levandowski on October 28, 2016 and respectfully refers the Court to the arbitration demands attached as Exhibit D to Levandowski's Amended Adversary Complaint for their complete and accurate contents. Uber denies the remaining allegations in paragraph 77. Answering further, Uber refers the Court to the

1 Arbitration Award as setting forth the complete and accurate account of any determinations made by  
2 the Arbitration Panel.

3 78. The two arbitration demands involved facts concerning Mr. Levandowski's dealings  
4 with an entity named "Odin Wave" (later renamed "Tyto LiDAR" or "Tyto") and the formation of  
Otto, which later acquired Tyto before Otto was acquired by Uber.

5 **ANSWER:** Uber admits that Google filed arbitration demands against Levandowski on  
6 October 28, 2016 and respectfully refers the Court to the arbitration demands attached as Exhibit D  
7 to Levandowski's Amended Adversary Complaint for their complete and accurate contents. Uber  
8 denies the remaining allegations in paragraph 78.

9 79. Google alleged that Mr. Levandowski violated his duties to Google through his  
10 relationship with Tyto. Google also alleged that Mr. Levandowski breached his obligations to  
11 Google by forming Otto, soliciting Google employees to join Otto and eventually Uber, and using  
confidential information regarding compensation to recruit Google employees.

12 **ANSWER:** Uber admits that Google filed arbitration demands against Levandowski on  
13 October 28, 2016 and respectfully refers the Court to the arbitration demands attached as Exhibit D  
14 to Levandowski's Amended Adversary Complaint for their complete and accurate contents. Uber  
15 denies the remaining allegations in paragraph 79.

16 80. The claims asserted by Google were the precise types of claims covered by the  
Indemnification Agreement.

17 **ANSWER:** Uber denies that the claims asserted by Google in arbitration are covered by  
18 the Indemnification Agreement. Uber denies the remaining allegations in paragraph 80.

#### 19 **G. UBER ACCEPTS THE INDEMNITY OBLIGATIONS**

20 81. On November 3, 2016, Mr. Levandowski promptly provided notice to Uber of these  
21 Former Employer Claims pursuant to the requirements of the Indemnification Agreement.

22 **ANSWER:** Uber admits that on November 3, 2016, Uber received notice of the Former  
23 Employer Claims under the Indemnification Agreement. Uber denies the remaining allegations in  
24 paragraph 81.

25 82. On November 3, 2016, Uber's in-house counsel and as its outside counsel from  
26 Morrison & Foerster LLP ("MoFo"), Eric Tate, interviewed Mr. Levandowski about the allegations  
27 asserted in Google's arbitration demands.  
28

**ANSWER:** Uber admits that Uber's counsel interviewed Levandowski on November 3, 2016 in connection with Google's arbitration demands. Uber denies the remaining allegations in paragraph 82.

83. After receipt of the notice and interviewing Mr. Levandowski, Uber accepted Mr. Levandowski's tender of the indemnity (even though Uber's outside counsel stated that he was concerned that not everything alleged in the arbitration demands was covered in the Stroz due diligence) and assumed control of Mr. Levandowski's defense.

**ANSWER:** Uber admits that on November 3, 2016, it received notice of Google's arbitration demands and that Uber's counsel interviewed Levandowski. Uber denies that Levandowski is entitled to indemnification. Uber denies the remaining allegations in paragraph 83.

84. Uber hired MoFo to initially represent Mr. Levandowski. Through its counsel, Uber controlled the strategy for Mr. Levandowski's defense, including deciding to consolidate the two arbitrations, initiating counterclaims, filing Mr. Levandowski's answer, alleging affirmative defenses, and dealing with procedural matters relating to the arbitration.

**ANSWER:** Uber admits that Morrison & Foerster represented Levandowski. Uber denies that it controlled the strategy for Levandowski's defense, including the issues identified in paragraph 84. Uber denies the remaining allegations in paragraph 84.

85. In February 2017, Waymo LLC ("Waymo")—the entity Project Chauffeur became after a corporate restructuring—initiated an action in the Northern District of California for misappropriation of trade secrets and patent infringement against Uber (the "Waymo Action"). That action alleged, among other things, that Mr. Levandowski had downloaded 14,000 files from a Google server, that those files contained trade secrets, and that he had used those files at Otto, which was acquired by Uber in 2016. These were the same files that Stroz had noted in its report, except that because Mr. Levandowski had downloaded the repository multiple times over his time at Google, Stroz had identified 24,000 files from that server.

**ANSWER:** Uber admits that in February 2017, Waymo initiated an action in the United States District Court for the Northern District of California, alleging misappropriation of trade secrets and patent infringement against Uber. Uber respectfully refers the Court to the amended complaint for its complete and accurate contents. Uber denies the remaining allegations in paragraph 85.

86. Based on Waymo's allegations, MoFo notified Google that Mr. Levandowski was invoking his Fifth Amendment rights and would not make disclosures in the arbitration.

**ANSWER:** Uber admits that Morrison & Foerster notified counsel for Waymo that Levandowski was invoking his Fifth Amendment privilege. Uber denies the remaining allegations in paragraph 86.

1           87. Several weeks after, MoFo determined it had a potential conflict of interest in jointly  
2 representing Uber and Mr. Levandowski. As a result, MoFo sought to withdraw from representation  
3 of Mr. Levandowski and continue with its representation of Uber.

4           **ANSWER:** Uber admits that Morrison & Foerster terminated its representation of  
5 Levandowski in connection with the Google Arbitration. Uber lacks knowledge or information  
6 sufficient to admit or deny whether Morrison & Foerster determined it had a conflict of interest, and  
7 denies the remaining allegations in paragraph 87.

8           88. Uber hired Goodwin Procter to separately represent Mr. Levandowski in the  
9 arbitration, but continued to control his defense.

10           **ANSWER:** Uber admits that Goodwin Procter represented Levandowski in the Google  
11 Arbitration. Uber denies the remaining allegations in paragraph 88. Answering further, Uber states  
12 that it was prohibited from seeing most of the discovery materials, was excluded from most of the  
13 arbitration hearing, was prohibited from seeing most of the legal briefing and expert reports, and  
14 exercised no control over either Levandowski's arguments or defenses.

15           89. For the next year, Uber continued to pay for Mr. Levandowski's legal defense as  
16 required by the Indemnification Agreement. Uber also continued to direct and control Mr.  
17 Levandowski's defense, requiring updates on the proceedings, approval over experts, discussion  
18 about who would be arguing motions, pre-approval of submissions to the arbitration panel, and  
19 insisting on handling all settlement discussions. Mr. Levandowski complied with Uber's  
20 requirements and cooperated with his defense. Mr. Levandowski and his counsel met with Uber  
21 whenever it requested.

22           **ANSWER:** Uber admits that it has paid some of Levandowski's legal expenses in  
23 connection with the Google Arbitration. Uber admits that it received periodic updates on proceedings  
24 in the arbitration. Uber denies the remaining allegations in paragraph 89.

25           90. Mr. Levandowski provided information and guidance that led to the discovery of  
26 evidence that was helpful to his defense in the arbitration as well as the Waymo action. This  
27 included guidance that led to the discovery of statements by the administrator of the server that  
28 housed the 14,000 files at issue that the files were "low value" and that "checking out" or  
downloading the entire repository of 14,000 files did not "ring the alarm bells" for him. This was  
because when a user accessed the server where the so-called 14,000 files were located, the system  
automatically downloaded the entire repository onto his or her laptop even if the user only wanted to  
access one or two files. Ultimately, this discovery, driven by Mr. Levandowski's contributions,  
became a centerpiece of Uber's defense in the Waymo case.

**ANSWER:** Uber admits that Levandowski provided information to his counsel in  
connection with the Waymo litigation and the Google Arbitration. Uber denies that Levandowski  
cooperated with Uber in the defense of the Google Arbitration as contemplated and required by the  
Indemnification Agreement. Uber denies the remaining allegations in paragraph 90.

91. In addition to providing this critical information, Mr. Levandowski also provided additional information to support Uber's defense. This included obtaining from a former Chauffeur team member the earrings she received as a parting gift that contained the alleged trade secrets at issue in the Waymo Action. Mr. Levandowski also identified numerous events and witnesses who aided Uber in its defense of the Waymo action as well as the arbitration with Google.

**ANSWER:** Uber admits that Levandowski provided information to his counsel in connection with the Waymo litigation and the Google Arbitration. Uber denies the remaining allegations in paragraph 91.

92. Mr. Levandowski also complied with Uber's requirement that Uber control all settlement discussions with Google. Mr. Levandowski made several proposals regarding possible settlement structures to Uber hoping that a global settlement could be reached with Google. But because Uber controlled settlement prospects with Google, Mr. Levandowski did not know whether any of his settlement proposals were made to Google.

**ANSWER:** Uber denies the allegations in paragraph 92.

#### **H. UBER SETTLES THE WAYMO ACTION**

93. In February 2018, while controlling Mr. Levandowski's defense, Uber settled the Waymo Action with Waymo/Google. The existence of a settlement between Uber and Waymo was publicly announced, but limited information regarding the exact terms of the settlement is publicly available.

**ANSWER:** Uber admits that a settlement was reached in the Waymo litigation, that the existence of the settlement was publicly announced in a press release on February 9, 2018, and that the terms of the settlement are confidential. See <https://www.uber.com/newsroom/uber-waymo-settlement/>. Uber denies the remaining allegations in paragraph 93.

94. Upon information and belief, that settlement agreement contained broad releases by both parties releasing claims as to the other's past and present employees.

**ANSWER:** Uber denies the allegations in paragraph 94.

95. Upon information and belief, Uber agreed to a broad release as to Mr. Levandowski, a past employee of Google.

**ANSWER:** Uber denies the allegations in paragraph 95. Answering further, Uber states that no release contained in the Google Settlement Agreement with Uber released or was intended to release any of Uber's claims or defenses against Levandowski. Uber further states that Levandowski does not have any right to enforce any term of the Google Settlement Agreement; Levandowski was neither a party nor an intended third party beneficiary of the Google Settlement Agreement. And, even if Levandowski could enforce the agreement against Uber, the agreement would not bar Uber from asserting the claims and defenses that it asserts here.

1           96. In addition, upon information and belief based on publicly available information, in  
2 the Waymo Settlement, Uber agreed to never hire or do business with Mr. Levandowski ever again.

3           **ANSWER:** Uber respectfully refers the Court to the Google Settlement Agreement for its  
4 complete and accurate contents. Uber denies the remaining allegations in paragraph 96.

5           97. Upon information and belief, because of the Waymo settlement terms, Uber refused  
6 to close on its acquisition of Otto Trucking or support Mr. Levandowski's trucking business.

7           **ANSWER:** Uber denies the allegations in paragraph 97.

8           98. Upon information and belief, Uber traded Mr. Levandowski's rights in Otto Trucking  
9 and his ability to practice his profession in exchange for a settlement with Waymo.

10          **ANSWER:** Uber denies the allegations in paragraph 98.

11          **I. UBER REQUESTS THAT MR. LEVANDOWSKI TESTIFY SHORTLY BEFORE THE**  
12          **ARBITRATION HEARING**

13          99. On April 2, 2018, days before the final arbitration hearing and nearly a year and a half  
14 after it accepted its obligation to indemnify Mr. Levandowski, Uber for the first time informed Mr.  
15 Levandowski that it intended to seek reimbursement for the Expenses it advanced for Mr.  
16 Levandowski to defend himself in the arbitration. **Exhibit E** is a true and correct copy of Uber's  
17 April 2, 2018 letter.

18          **ANSWER:** Uber admits that on April 2, 2018, counsel for Uber sent a letter to  
19 Levandowski's counsel. Uber respectfully refers the Court to the April 2, 2018 letter for its complete  
20 and accurate contents. Uber denies the remaining allegations in paragraph 99.

21          100. One basis for Uber's claim for reimbursement was that Mr. Levandowski "refused to  
22 testify at his deposition through an unjustifiably broad invocation of the Fifth Amendment"— which  
23 Mr. Levandowski had exercised over a year before with full knowledge of Uber.

24          **ANSWER:** Uber admits that the language quoted in paragraph 100 appears in the April 2,  
25 2018 letter to Levandowski's counsel and respectfully refers the Court to the letter for its complete  
26 and accurate contents. Uber admits that Levandowski had previously exercised his Fifth Amendment  
27 rights in a separate matter. Uber denies the remaining allegations in paragraph 100.

28          101. Nevertheless, in its April 2, 2018 letter, Uber claimed that Mr. Levandowski's refusal  
to testify in the arbitration proceedings (after the *Waymo* court had issued an order of referral to the  
United States' attorney) was now a breach of the Indemnification Agreement.

**ANSWER:** Uber admits that the April 2, 2018 letter to Levandowski's counsel discusses  
Levandowski's obligations under the Indemnification Agreement and respectfully refers the Court to  
the letter for its complete and accurate contents. Uber denies the remaining allegations in paragraph  
101.



1           102. Uber then demanded that Mr. Levandowski waive his Fifth Amendment rights and  
2           testifying during the arbitration.

3           **ANSWER:** Uber admits that on April 2, 2018, its counsel sent Levandowski's counsel a  
4           letter that requested that Levandowski reconsider his position in invoking the Fifth Amendment so  
5           he could testify at the arbitration hearing. Uber respectfully refers the Court to the April 2, 2018  
6           letter for its complete and accurate contents. Uber denies the remaining allegations in paragraph 102.

7           103. In response to Uber's request, Mr. Levandowski immediately alerted Google and the  
8           arbitration panel that he was willing to testify and offered to make himself available for deposition  
9           before the arbitration hearing.

10           **ANSWER:** Uber admits that after receiving the April 2, 2018 letter, Levandowski's  
11           counsel communicated with Google and the Arbitration Panel about potentially testifying to certain  
12           topics and Uber refers to those communications for their content. Uber denies the remaining  
13           allegations in paragraph 103.

14           104. Mr. Levandowski also provided the arbitration panel and Uber with a proffer of the  
15           topics on which he was willing to testify.

16           **ANSWER:** Uber admits that Levandowski submitted a proffer to the Arbitration Panel  
17           and that it was denied. Uber respectfully refers the Court to the Arbitration Panel's Order for its  
18           complete and accurate contents. Uber denies the remaining allegations in paragraph 104.

19           105. Mr. Levandowski's offer to testify was denied by the arbitration panel, and Uber  
20           continued to pay Mr. Levandowski's legal fees and retain control over Mr. Levandowski's defense  
21           through the arbitration hearing and post-hearing briefing.

22           **ANSWER:** Uber admits that Levandowski's offer to testify, after previously asserting the  
23           Fifth Amendment during his deposition, was denied by the Arbitration Panel. Uber admits that it  
24           paid Levandowski's legal fees until September 25, 2019, the date the Arbitration Panel declared the  
25           arbitration hearing closed. Uber denies the remaining allegations in paragraph 105.

26           106. In addition, for the first time, Uber also stated that it believed that Google's claims  
27           relating to an entity called "Tyto" are Excluded Claims for which Uber may seek reimbursement  
28           after the arbitration was concluded because, according to Uber, Mr. Levandowski "provided no  
            information to Stroz Friedberg regarding his connection to [Tyto]."

**ANSWER:** Uber admits that the language quoted in paragraph 106 appears in the April 2,  
            2018 letter to Levandowski's counsel and respectfully refers the Court to the letter for its complete  
            and accurate contents. Uber admits that in its April 2, 2018 letter it asserted that Google's claims



1 relating to Tyto Misconduct by Levandowski are Excluded Claims as defined in the Indemnification  
2 Agreement. Uber denies the remaining allegations in paragraph 106.

3 107. Uber's claims were false. Uber accepted Mr. Levandowski's tender of indemnity  
4 *only after* Google's commencement of the arbitration proceeding alleging claims relating to Tyto and  
5 *only after* Mr. Levandowski had been interviewed by Uber extensively about Google's allegations  
6 relating to Tyto. In addition, Mr. Levandowski's devices given to Stroz had extensive information  
7 about Tyto on them. And Stroz had specifically identified other materials on Mr. Levandowski's  
8 devices that he had not disclosed during interviews.

9 **ANSWER:** Uber admits that on November 3, 2016, Levandowski notified Uber that he  
10 was requesting indemnity in connection with the Google Arbitration. Uber admits that the Google  
11 Arbitration alleges claims related to Tyto. Uber admits that Stroz identified some materials on  
12 Levandowski's devices that he had not disclosed in his interviews. Uber denies that on November 3,  
13 2016 it had knowledge of any Tyto information on devices given to Stroz. Uber denies the remaining  
14 allegations in paragraph 107. Answering further, Uber states that Levandowski intentionally did not  
15 disclose his involvement with Tyto in response to questions posed to him by Stroz prior to entry of  
16 the Indemnification Agreement, and that Uber learned that Levandowski had engaged in wrongful  
17 conduct in establishing and developing the Tyto business only later, through the allegations in the  
18 Google Arbitration and discovery in the Waymo litigation.

19 108. In fact, Uber had considered acquiring Tyto in 2015 but declined to do so at that time.  
20 Tyto was ultimately acquired by Otto with Uber's consent and at Uber's request prior to Uber  
21 closing on its acquisition of Otto to secure a lower price for Tyto than what Tyto would have  
22 requested had it known that Uber was the acquirer.

23 **ANSWER:** Uber admits that Tyto was acquired by Otto with Uber's consent prior to  
24 Uber's acquisition of Otto. Uber denies the remaining allegations in paragraph 108. Answering  
25 further, at the time that Uber acquired Otto and at the time that Uber consented to Otto's acquisition  
26 of Tyto, Uber did not know that Levandowski had been involved with Tyto and did not know that  
27 Levandowski engaged in wrongful conduct in establishing and developing the Tyto business.

28 109. Moreover, prior to April 2018, Uber received extensive documents and information  
about Tyto in the Waymo Action and had actively participated in preparing former Tyto employees  
(then Uber employees) for depositions, through which Uber acquired knowledge that Mr.  
Levandowski had helped Tyto get started. Indeed, Tyto's founder, Brent Schwarz, its technological  
lead, James Haslim, and the manager of the entity that invested in Tyto, Ognen Stojanovski, all  
worked for Uber and were deposed about Tyto. Uber had counsel present at the meetings with these  
witnesses and during most, if not all, of their testimony. These individuals were also central  
witnesses in the two arbitrations with Google with respect to the Tyto-related allegations.

**ANSWER:** Uber admits that Brent Schwarz, James Haslim, and Ognen Stojanovski testified in either the Waymo litigation or the Google Arbitration, and that they each worked for Uber at some point. Uber refers to the transcripts of their testimony to establish who was present and for what duration. Uber admits that discovery related to Tyto was provided in the Waymo action. Uber admits that it learned certain information through the Waymo litigation that indicated that Levandowski had engaged in misconduct related to Tyto. Uber denies the remaining allegations in paragraph 109. Answering further, Uber states that Levandowski failed to disclose to Stroz or to Uber his role and his misconduct in connection with Tyto, and that Uber learned that information only later, through the Waymo litigation and through Google's allegations against Levandowski in the Google Arbitration.

110. Specifically, Uber was aware that Mr. Levandowski had facilitated the relationship between Tyto's founder and its investor, a holding company managed by Mr. Stojanovski that invested funds provided by two irrevocable trusts formed for the benefit of Mr. Levandowski's children, and would visit Tyto and his friends at that company to talk about technical and business matters from time to time. Uber was also aware of Pierre Droz's (a Google employee) allegations that Mr. Levandowski was involved with Tyto and even deposed him extensively on that very topic during the Waymo litigation.

**ANSWER:** Uber admits that through testimony in the Waymo litigation in 2017–2018 it learned certain information about Levandowski's involvement with Tyto, and that Uber learned of Peter Droz's allegations during the Waymo litigation in 2017–2018. Uber refers to the testimony of Droz and Stojanovski as setting forth the information that they provided through their testimony. Uber denies the remaining allegations in paragraph 110.

111. Armed with this knowledge, Uber paid for and controlled Mr. Levandowski's defense of the arbitration. In fact, Uber did not raise any issues regarding coverage until April 2018.

**ANSWER:** Uber admits that it paid for Levandowski's legal expenses in connection with the defense of the Google Arbitration through September 25, 2019. Uber denies the remaining allegations in paragraph 111.

#### **J. UBER REFUSES TO PAY EXPENSES RELATING TO GOOGLE'S CLAIMS**

112. On March 28, 2019, the arbitration panel issued an interim award in favor of Google. The arbitration panel found violation of the exact claims covered by the Indemnification Agreement and found that Mr. Levandowski needed to pay back every cent of the compensation paid by Google.

1           **ANSWER:** Uber admits that on March 26, 2019, the Arbitration Panel issued an interim  
 2 award and respectfully refers the Court to it for its complete and accurate contents. Uber denies the  
 3 remaining allegations in paragraph 112.

4           113. On May 13, 2019, Mr. Levandowski requested confirmation from Uber that it was  
 5 going to abide by its indemnity obligations and pay for any adverse award in light of the interim  
 6 award. **Exhibit F** is a redacted copy of Mr. Levandowski's May 13, 2019 letter.

7           **ANSWER:** Uber admits that on May 13, 2019, its counsel received a letter from  
 8 Levandowski's counsel and respectfully refers the Court to the letter for its complete and accurate  
 9 contents. Uber denies the remaining allegations in paragraph 113.

10           114. In addition, Mr. Levandowski responded to Uber's claim that Mr. Levandowski did  
 11 not disclose information relating to Tyto to Stroz during the due diligence. Mr. Levandowski  
 12 identified numerous documents that the arbitration panel relied on relating to Tyto that were on the  
 13 devices he provided to Stroz as well and pointed out that documents from his devices were shown to  
 14 witnesses at the arbitration hearing.

15           **ANSWER:** Uber admits that on May 13, 2019, its counsel received a letter from  
 16 Levandowski's counsel and respectfully refers the Court to the letter for its complete and accurate  
 17 contents. Uber denies the remaining allegations in paragraph 114.

18           115. Mr. Levandowski sent Uber a follow up letter on June 27, 2019. **Exhibit G** is a true  
 19 and correct copy of that follow-up letter.

20           **ANSWER:** Uber admits the allegations in paragraph 115.

21           116. On July 3, 2019, Uber responded to Mr. Levandowski's May and June 2019 letters  
 22 stating that Mr. Levandowski had breached the Indemnification Agreement, that a majority of the  
 23 interim award was "attributable to an Excluded Claim," and that "Uber has no contractual obligation  
 24 to advance any funder to Mr. Levandowski or to Google on Mr. Levandowski's behalf." **Exhibit H**  
 25 is a true and correct copy of Uber's July 3, 2019 letter.

26           **ANSWER:** Uber admits that on July 3, 2019, its counsel responded to Levandowski's  
 27 counsel's letter of June 27, 2019, and respectfully refers the Court to the letter for its complete and  
 28 accurate contents. Uber denies the remaining allegations in paragraph 116.

1           117. On August 15, 2019, Mr. Levandowski was indicted for thirty-three counts of trade  
 2 secret misappropriation. The alleged trade secrets at issue in the indictment were some of the same  
 3 ones that were at issue in the Waymo Action. Mr. Levandowski ultimately agreed to plead guilty to  
 4 one count of trade secret misappropriation based on his access of one Google document containing  
 5 trade secret information on one occasion after he left Google and has accepted restitutionary  
 6 obligations in the amount of \$756,499.22. This one file was the same file that Stroz expressly  
 7 identified in its report to Uber, and in fact, the Stroz report was the basis for the indictment and the  
 8 plea. The government agreed to dismiss the remaining thirty-two counts against Mr. Levandowski.

**ANSWER:** Uber admits that on August 15, 2019, Levandowski was indicted pursuant to 18 U.S.C. § 1832(a)(1), (2), (3) & (4), Theft and Attempted Theft of Trade Secrets, and 18 U.S.C. §§ 1843 and 2323, Criminal Forfeiture. *United States of America v. Anthony Scott Levandowski*, Case No. 3:19-cr-00377-WHA (N.D. Cal. filed Aug. 15, 2019). Uber admits that trade secret misappropriation, among other things, was at issue in the Waymo litigation, and respectfully refers the Court to the amended complaint filed in the Waymo litigation for its complete and accurate contents. Uber admits that Levandowski has pled guilty to one count of Theft and Attempted Theft of Trade Secrets in violation of 18 U.S.C. § 1832(a)(1), (2), (3) & (4). Uber further admits that as part of Levandowski's sentence he has been ordered to pay \$756,499.22 in restitution to Waymo LLC. *United States of America v. Anthony Scott Levandowski*, Case No. 3:19-cr-00377-WHA (Dkt. 99, filed Aug. 6, 2020 "Judgment in a Criminal Case"). Uber admits that counts one through thirty-two of the indictment were dismissed on the motion of the United States. *Id.* Uber admits that a file identified in Levandowski's indictment was also identified in the Stroz report. Uber denies the remaining allegations in paragraph 117. Answering further, Levandowski later represented to Uber that he had retained Google confidential information after he left Google because he was worried that Google would not pay him his bonus and wanted to demonstrate the work he had done to earn that bonus.

118. On August 30, 2019, counsel for Uber claimed that Mr. Levandowski had fraudulently induced Uber into entering into the Indemnification Agreement, the remedy for which was rescission of the agreement. **Exhibit I** is a true and correct copy of Uber's August 30, 2019 letter.

**ANSWER:** Uber admits that on August 30, 2019, its counsel corresponded with counsel for Levandowski, and respectfully refers the Court to the letter for its complete and accurate contents. Uber further admits that in its August 30, 2019 letter it informed counsel that it is Uber's view that Levandowski fraudulently induced Uber to enter into the Indemnification Agreement. Uber further admits that its counsel stated in the August 30, 2019 letter that rescission of the Indemnification Agreement was a proper remedy. Uber denies the remaining allegations in paragraph 118.

119. At this point in time, Uber did not clearly state that the Indemnification Agreement was rescinded (and instead said it had a remedy of rescission should it choose to exercise it), make

any offer to restore the consideration it received under the agreement, or cede control of Mr. Levandowski's defense.

**ANSWER:** Uber denies Levandowski's characterization of the letter, and respectfully refers the Court to the letter for its complete and accurate contents. Uber denies the remaining allegations in paragraph 119.

120. Uber continued to advance payment for expenses incurred through September 25, 2019.

**ANSWER:** Uber admits that it advanced payment for expenses incurred through September 25, 2019. Uber denies the remaining allegations in paragraph 120. Answering further, Uber states that on September 27, 2019, counsel for Uber sent a letter to Levandowski's counsel stating that "[i]n the spirit of compromise and good will," Uber would pay Levandowski's counsel through September 25, 2019, the date on which the Arbitration Panel declared the hearing closed. Uber respectfully refers the Court to the September 27, 2019 letter for its complete and accurate contents.

121. On September 27, 2019, Uber exercised its control over Mr. Levandowski to terminate its engagement of Goodwin Procter as counsel for Mr. Levandowski. Following this termination, Mr. Levandowski separately engaged Goodwin Procter to represent him.

**ANSWER:** Uber admits that on September 27, 2019, counsel for Uber sent a letter to Levandowski's counsel stating that Uber's engagement with Goodwin Procter "in connection with the defense of the arbitration brought by Google . . . is terminated." Uber respectfully refers the Court to the September 27, 2019 letter for its complete and accurate contents. Uber admits that Levandowski subsequently engaged Goodwin Procter. Uber denies the remaining allegations in paragraph 121.

122. In addition, on November 5, 2019, Uber filed a Form 10-Q with the Securities and Exchange Commission. In that filing, Uber again affirmed its indemnity obligations, stating, "The panel's final award is expected by December 24, 2019. Pursuant to a contractual obligation, Uber is indemnifying both employees with respect to certain claims. Whether Uber is ultimately responsible for such indemnification, however, depends on the exceptions and conditions set forth in the indemnification agreement." **Exhibit J** contains excerpts from Uber's November 2019 10-Q filing with the Securities Exchange Commission.

**ANSWER:** Uber admits that on November 5, 2019, it filed a Form 10-Q with the Securities and Exchange Commission. Uber further admits that the language quoted in paragraph

122 appears in the filed Form 10-Q and respectfully refers the Court to the filed Form 10-Q for its complete and accurate contents. Uber denies the remaining allegations in paragraph 122.

123. On December 6, 2019, the arbitration panel issued a final arbitration award. In addition to the findings from the Interim Award, the Final Award awarded Google prejudgment interest at the 10% rate pursuant to Cal. Civ. Code § 3287, and awarded attorneys' fees and costs to Google under Cal. Civ. Code. § 1717.

**ANSWER:** Uber admits that on December 6, 2019, the Arbitration Panel issued a final arbitration award and respectfully refers the Court to it for its complete and accurate contents.

Answering further, Uber states that on December 23, 2019, the Arbitration Panel issued a Corrected Final Award that was *nunc pro tunc* as of December 6, 2019. Uber denies the remaining allegations in paragraph 123.

124. The Final Award was not based on any alleged trade secret misappropriation by Mr. Levandowski or others. During the arbitration proceedings, Google had repeatedly represented that it was pursuing only claims premised on different conduct than what was at issue in the Waymo litigation. The arbitration panel recognized this on several occasions.

**ANSWER:** Uber admits that the Arbitration Panel entered a corrected final award on December 23, 2019, *nunc pro tunc* as of December 6, 2019, and respectfully refers the Court to it for its complete and accurate contents. Uber denies the remaining allegations in paragraph 124.

125. On December 10, 2019, Mr. Levandowski informed Uber of the final award. **Exhibit K** is a true and correct copy of Mr. Levandowski's December 10, 2019 letter. Because of the lack of clarity in Uber's previous statements, Mr. Levandowski asked Uber, as the Indemnitor in control of the defense of the case, how it would like to proceed. Specifically, Mr. Levandowski inquired whether Uber intended to resolve the matter by paying the judgment or whether it would continue to advance Expenses, including paying for Mr. Levandowski's counsel through any appeal and posting a bond to stay the judgment pending appeal.

**ANSWER:** Uber admits that on December 10, 2019, Levandowski's counsel informed Uber that the Arbitration Panel issued its final award in *Google v. Levandowski and Ron* on December 6, 2019. Uber respectfully refers the Court to the December 10, 2019 letter for its complete and accurate contents. Uber denies the remaining allegations in paragraph 125.

126. On December 31, 2019, Uber responded to Mr. Levandowski's December 10, 2019 letter and stated that it rescinded the Indemnification Agreement. **Exhibit L** is a true and correct copy of Uber's December 31, 2019 letter. The stated basis for rescission of the Indemnification Agreement was Mr. Levandowski's alleged failure to disclose his connection to Tyto—the same basis that Uber previously stated for seeking reimbursement under the Indemnification Agreement for Expenses paid relating to the claims based on Tyto.



1           **ANSWER:** Uber admits that on December 31, 2019, Uber's counsel responded to  
 2 Levandowski's counsel and respectfully refers the Court to the letter for its complete and accurate  
 3 contents. Uber admits that in the December 31, 2019 letter, counsel for Uber stated that Uber  
 4 rescinded the Indemnification Agreement, but denies that Uber had not previously rescinded the  
 5 Indemnification Agreement. Uber denies the remaining allegations in paragraph 126.

6           127. Uber stated that it would not pay any portion of the final award or advance any  
 7 additional Expenses.

8           **ANSWER:** Uber admits that in the December 31, 2019 letter, Uber's counsel stated that  
 9 Uber has no obligations to advance expenses and that Uber "will not pay any part of the Final  
 10 Award." Uber denies the remaining allegations in paragraph 127.

11           128. In addition, Uber ceded its right to direct and control the defense of Mr.  
 12 Levandowski's case, stating, "Nor will Uber . . . take any steps—including hiring separate counsel—to  
 13 direct and control Mr. Levandowski's petition to vacate the Final Award or any subsequent  
 14 appeals."

15           **ANSWER:** Uber admits that on December 31, 2019, Uber's counsel sent Levandowski's  
 16 counsel a letter and that the language quoted in paragraph 128 appears in the letter. Uber respectfully  
 17 refers the Court to the letter for its complete and accurate contents. Uber denies the remaining  
 18 allegations in paragraph 128.

19           129. On February 5, 2020, Uber provided payment for Mr. Levandowski's Expenses  
 20 through September 25, 2019. Uber did not provide payment for any Expenses incurred after that  
 21 date.

22           **ANSWER:** Uber admits that it provided payment to Levandowski through September 25,  
 23 2019. Uber denies the remaining allegations in paragraph 129.

24           130. On March 4, 2020, Judge Schulman in San Francisco Superior Court entered a  
 25 judgment in Google's favor against Mr. Levandowski in the amount of \$179,047,998.64. **Exhibit M**  
 26 is a true and correct copy of the judgment in Google's favor.

27           **ANSWER:** Uber admits the allegations in paragraph 130.

28           131. On March 4, 2020, following entry of the judgment in Google's favor, Mr.  
 Levandowski filed a chapter 11 petition in the United States Bankruptcy Court for the Northern  
 District of California commencing the Chapter 11 Case.

**ANSWER:** Uber admits the allegations in paragraph 131.

132. On March 6, 2020, Mr. Levandowski provided notice of the judgment to Uber and  
 requested advancement of payment for these Expenses under Section 2.3 of the Indemnification  
 Agreement. In addition, Mr. Levandowski requested an advance for attorneys' fees and costs in the



1 amount of \$475,571.32, which Mr. Levandowski had incurred between September 26, 2019 and  
2 February 29, 2020. **Exhibit N** is a copy of Mr. Levandowski's March 6, 2020 request without  
3 exhibits.

4 **ANSWER:** Uber admits that on March 6, 2020, counsel for Levandowski provided notice  
5 of the March 4, 2020 judgment and a "Request for Advancement of Expenses Pursuant to Section  
6 2.3 of the Indemnification Agreement" to Uber's counsel. Uber respectfully refers the Court to the  
7 letter for its complete and accurate contents. Uber denies the remaining allegations in paragraph 132.

8 133. On March 27, 2020, Uber responded to Mr. Levandowski's March 6, 2020 letter and  
9 reaffirmed its position that it had rescinded the Indemnification Agreement and was not going to pay  
10 Google's judgment or any other Expenses. **Exhibit O** is a copy of Uber's March 27, 2020 letter.

11 **ANSWER:** Uber admits that its counsel responded to Levandowski's counsel on March  
12 27, 2020 and respectfully refers the Court to the letter for its complete and accurate contents. Uber  
13 denies the remaining allegations in paragraph 133.

14 134. As a result, Mr. Levandowski filed an arbitration demand with JAMS San Francisco.

15 **ANSWER:** Uber admits that Levandowski filed an arbitration demand with JAMS in San  
16 Francisco, California. Uber denies the remaining allegations in paragraph 134.

17 135. Uber filed an answer on April 13, 2020 in which it alleged, among other defenses that  
18 it had rescinded the Indemnification Agreement based on Mr. Levandowski's purported fraud, and  
19 that if the Indemnification Agreement remains enforceable, a majority of Google's judgment is  
20 allocable to Excluded Claims as defined in the Indemnification Agreement.

21 **ANSWER:** Uber filed an answer on April 13, 2020 in which it alleged, among other  
22 defenses, that it had rescinded the Indemnification Agreement based on Levandowski's purported  
23 fraud, and that if the Indemnification Agreement remains enforceable, a majority of Google's  
24 judgment is allocable to Excluded Claims as defined in the Indemnification Agreement.

25 136. On July 6, 2020, Uber filed the Proof of Claim, through which it brought into the  
26 Chapter 11 Case issues from the arbitration to support its purported position as a creditor of Mr.  
27 Levandowski. **Exhibit P** is a true and correct copy of Uber's Proof of Claim, ECF No. 8-1.

28 **ANSWER:** Uber admits that it filed a Proof of Claim on July 6, 2020 and respectfully  
refers the Court to the Proof of Claim for its complete and accurate contents. Uber denies the  
remaining allegations in paragraph 136.

137. On July 28, 2020, the parties agreed, and the Court approved, that Mr. Levandowski  
could withdraw his arbitration demand and that all disputes in the arbitration demand, the original  
complaint in this proceeding, and Uber's proof of claim would be resolved as part of this Adversary  
Proceeding.

**ANSWER:** Uber admits that on July 29, 2020, the Court entered a stipulation whereby the parties agreed that Levandowski could withdraw his arbitration demand and that “all disputes” between Uber and Levandowski would be resolved before this Court as part of the Adversary Proceeding, including disputes raised in Levandowski’s demand in arbitration, his Complaint in the Adversary Proceeding (including claims related to the Otto Trucking Agreement), and Uber’s Proof of Claim in the Chapter 11 case. Uber denies the remaining allegations in paragraph 137.

## **COUNT I**

### **(Declaratory Judgment - Waymo Settlement Release)**

138. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully stated herein.

**ANSWER:** Uber restates and incorporates by reference as though fully set forth herein its answers to each of the allegations above.

139. On February 8, 2018, Waymo and Uber executed a settlement agreement to resolve Waymo’s dispute with Uber.

**ANSWER:** Uber admits that it entered into a Settlement Agreement as part of the Waymo litigation on February 8, 2018, and respectfully refers the Court to the agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 139.

140. Upon information and belief, the Waymo Settlement contained broad releases in which Google and Uber released known and unknown claims that have or could be asserted against the other’s past and former employees.

**ANSWER:** Uber denies the allegations in paragraph 140.

141. Upon information and belief, Mr. Levandowski is a beneficiary of the releases in the Waymo Settlement as he is a former employee of Google.

**ANSWER:** Uber denies the allegations of paragraph 141.

142. Upon information and belief, Google excluded from its release the arbitration claims against Mr. Levandowski and Uber did not exclude any claims against Mr. Levandowski in its release.

**ANSWER:** Uber denies the allegations in paragraph 142.

143. Upon information and belief, all of the claims in the Proof of Claim and Uber’s Answer and Counterclaims, including Uber’s claims for rescission, restitution of benefits provided under the Indemnification Agreement, consequential damages arising from Mr. Levandowski’s alleged fraud, contribution from Mr. Levandowski for the Ron and Waymo Settlements, Uber’s assertion that the Tyto claims are “Excluded Claims” or that Uber is entitled to a setoff based on

1 Tyto, and any claim for attorneys' fees arising from litigation relating to the foregoing dispute, were  
2 released by Uber in the Waymo Settlement.

3 **ANSWER:** Uber denies the allegations in paragraph 143.

4 144. As a result of the Proof of Claim and Mr. Levandowski's objection thereto, a live  
5 controversy exists as to whether Uber released Mr. Levandowski in the Waymo Settlement and, if so,  
6 what claims Uber released.

7 **ANSWER:** Uber denies the allegations in paragraph 144.

8 145. This issue is ripe for determination and requires a declaration as to Mr.  
9 Levandowski's rights in the Waymo Settlement.

10 **ANSWER:** Uber denies the allegations in paragraph 145.

11 146. Mr. Levandowski seeks a declaration that the claims and defenses in the Proof of  
12 Claim and Uber's Amended Answer and Counterclaims, including Uber's claims for rescission,  
13 restitution of benefits provided under the Indemnification Agreement, consequential damages arising  
14 from Mr. Levandowski's alleged fraud, contribution from Mr. Levandowski for the Ron and Waymo  
15 Settlements, Uber's assertion that the Tyto claims are "Excluded Claims" or that Uber is entitled to a  
16 setoff based on Tyto, and any claim for attorneys' fees arising from litigation relating to the  
17 foregoing dispute, are barred by the Waymo Settlement.

18 **ANSWER:** Uber denies the allegations in paragraph 146.

## 19 COUNT II

### 20 (Specific Performance to Pay Expenses)

21 147. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully stated  
22 herein.

23 **ANSWER:** Uber restates and incorporates by reference as though fully set forth herein its  
24 answers to each of the allegations above.

25 148. On April 11, 2016, Mr. Levandowski and Uber entered into the Indemnification  
26 Agreement wherein Uber agreed to indemnify Mr. Levandowski for "any claim that has arisen out of  
27 or resulted from any Pre-Signing Bad Acts . . . committed by [Mr. Levandowski]" arising out of the  
28 facts or circumstances that were part of the Stroz investigation. Ex. A at 1-2.

**ANSWER:** Uber admits that Levandowski and Uber entered into an Indemnification  
Agreement dated April 11, 2016, and respectfully refers the Court to the Agreement for its complete  
and accurate contents. Uber denies the remaining allegations in paragraph 148.

149. Specifically, Uber agreed to "indemnify and hold harmless [Mr. Levandowski] . . . to  
the maximum extent permitted by applicable law . . . from and against any and all Expenses incurred  
by [Mr. Levandowski]" any claims brought by a Former Employer "arising out of or alleged to arise  
out of" among other things, Mr. Levandowski's breach of his "fiduciary duty or duty of loyalty to  
[his] Former Employer" and/or "breach [] of any non-solicitation, non-competition, confidentiality  
or similar restrictive covenant or agreement" between him and a Former Employer. Ex. A at  
§ 2.1(a).

**ANSWER:** Uber admits that the language quoted in paragraph 149 appears in Section 2.1(a) of the Indemnification Agreement and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 149. Answering further, the Arbitration Award is not indemnifiable for multiple reasons as set forth in Uber's affirmative defenses and counterclaims, including, but not limited to, that the award was based upon felonious conduct, including conduct in violation of California Penal Code Section 502, that the award arises out of one or more Excluded Claims, that the award is not indemnifiable as a matter of policy and contract because it orders the disgorgement of monies to which Levandowski was not entitled, that the Indemnification Agreement was rescinded, and that Uber has no indemnification obligations due to Levandowski's commission of a Post-Signing Specified Bad Act.

150. As defined in the Indemnification Agreement, "Expenses" includes reasonable attorneys' fees, costs associated with defense against a Former Employer's claim, and any awards, judgments, or any amounts paid or to be paid in settlement of Google's claims. *Id.* at 3.

**ANSWER:** Uber admits that page 3 of the Indemnification Agreement contains an Expenses definition and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 150.

151. Under Section 2.3 of the Indemnification Agreement, Uber is required to advance payment for Expenses within a set period following a request for advancement.

**ANSWER:** Uber admits that Section 2.3 of the Indemnification Agreement provides provisions related to Expenses and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 151.

152. On March 6, 2020, Mr. Levandowski requested that Uber advance payment for Google's judgment and the attorneys' fees and costs Mr. Levandowski had incurred between September 26, 2019 and February 29, 2020 as Expenses under Section 2.3.

**ANSWER:** Uber admits that on March 6, 2020, counsel for Levandowski sent a "Request for Advancement of Expenses Pursuant to Section 2.3 of the Indemnification Agreement" to Uber's counsel and respectfully refers the Court to that letter for its complete and accurate contents. Uber denies the remaining allegations in paragraph 152.

153. Uber has refused to advance payment for the Expenses requested in the March 6 Request and continues to refuse to pay for any Expenses.

1           **ANSWER:** Uber admits that it has not advanced payment to Levandowski pursuant to  
 2 Levandowski's March 6, 2020 request for advancement of Expenses. Uber denies that Levandowski  
 3 is entitled to indemnification or any payment of Expenses pursuant to the Indemnification  
 4 Agreement. Uber denies the remaining allegations in paragraph 153.

5           154. Mr. Levandowski has fully performed his obligations under the Indemnification  
 6 Agreement.

7           **ANSWER:** Uber denies the allegations in paragraph 154.

8           155. In the Indemnification Agreement, Uber agreed that Mr. Levandowski would be  
 9 irreparably harmed by Uber's failure to indemnify him against a claim by Google and that monetary  
 10 damages would be an inadequate remedy. *See id.* at § 3.11. Uber also agreed that Mr. Levandowski  
 11 may seek specific performance to enforce Uber's obligations under the Indemnification Agreement.  
 12 *See id.*

13           **ANSWER:** Uber denies the characterization that Levandowski would be irreparably  
 14 harmed by Uber's failure to indemnify him against a claim by Google and that monetary damages  
 15 would be an inadequate remedy and respectfully refers the Court to the Indemnification Agreement  
 16 for its complete and accurate contents. Uber denies the remaining allegations in paragraph 155.

17           156. Moreover, Mr. Levandowski has been irreparably harmed by Uber's continued breach  
 18 of the Indemnification Agreement. By way of example only, Uber's breach of the Indemnification  
 19 Agreement directly caused Mr. Levandowski to have to file this bankruptcy proceeding. The parties  
 20 to the Indemnification Agreement specifically agreed that disputes regarding reimbursement of  
 21 payments made under the Indemnification Agreement would not take be resolved until after Uber  
 22 has satisfied its obligations to pay any final judgment and the Expenses Mr. Levandowski incurred.  
 23 Uber's breach has materially impacted Mr. Levandowski's ability to continue to pursue litigation  
 24 against Google and Uber.

25           **ANSWER:** Uber denies the allegations in paragraph 156.

26           157. Any such action for specific performance may be filed in a state or federal court  
 27 located in the City and County of San Francisco. *See id.* § 3.5.

28           **ANSWER:** Uber admits that the Indemnification Agreement contains a provision called  
 "Applicable Law" at Section 3.5 and respectfully refers the Court to the Agreement for its complete  
 and accurate contents. Uber denies the remaining allegations in paragraph 157.

158. The Indemnification Agreement was reasonable and supported by adequate  
 consideration in the Indemnification Agreement itself as well as in the overall transaction for Uber to  
 acquire Otto.

**ANSWER:** Uber denies the allegations in paragraph 158.

159. A mutuality of remedies exists as either party is able to adjudicate the issue of whether an Indemnified Claim is an Excluded Claim and have agreed to seek resolution of whether any claim is an Excluded Claim in this proceeding.

**ANSWER:** Paragraph 159 contains legal conclusions to which no response is required. To the extent a response is required, Uber admits that on July 29, 2020, this Court entered a stipulation whereby, among other things, “Uber and Mr. Levandowski agree that all issues relating to the Excluded Claim dispute under the Indemnification Agreement will be presented and resolved as part of the Adversary Proceeding, without any claim or defense relating to the Excluded Claim dispute being delayed based on any alleged need for a final non-appealable judgment in Mr. Levandowski’s pending state-court appeal of the Google v. Levandowski arbitration award.” (Case No. 20-03050, Dkt. 13.) Uber denies the remaining allegations in paragraph 159.

160. The contract is sufficiently definite in requiring that Uber must first pay for all Expenses, including payment of any awards and judgments or posting any appeal bond, and may only seek reimbursement of any Expenses following resolution of an Indemnified Claim through either settlement or a final, non-appealable judgment.

**ANSWER:** Uber denies the allegations in paragraph 160.

161. Therefore, Mr. Levandowski seeks to enforce by this action the terms Uber agreed to in the Indemnification Agreement—that Uber pay for the Expenses requested on March 6, 2020 as well as payment of Google’s judgment and the attorneys’ fees and costs incurred by Mr. Levandowski thus far, as well as any post-judgment interest which has or will accrue, and all other Expenses that Mr. Levandowski has and will incur.

**ANSWER:** Uber denies the allegations in paragraph 161.

### **COUNT III**

#### **(Breach of Indemnification Agreement)**

162. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully stated herein.

**ANSWER:** Uber restates and incorporates by reference as though fully set forth herein its answers to each of the allegations above.

163. On April 11, 2016, Mr. Levandowski and Uber entered into the Indemnification Agreement wherein Uber agreed to indemnify Mr. Levandowski for “any claim that has arisen out of or resulted from any Pre-Signing Bad Acts . . . committed by [Mr. Levandowski]” arising out of the facts or circumstances that were part of the Stroz investigation. Ex. A at 1-2.

**ANSWER:** Uber admits that Levandowski and Uber entered into an Indemnification Agreement dated April 11, 2016 and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 163. Answering further,



the Arbitration Award is not indemnifiable for multiple reasons as set forth in Uber's affirmative defenses and counterclaims, including, but not limited to, that the award was based upon felonious conduct, including conduct in violation of California Penal Code Section 502, that the award arises out of one or more Excluded Claims, that the award is not indemnifiable as a matter of policy and contract because it orders the disgorgement of monies to which Levandowski was not entitled, that the Indemnification Agreement was rescinded, and that Uber has no indemnification obligations due to Levandowski's commission of a Post-Signing Specified Bad Act.

164. Specifically, Uber agreed to "indemnify and hold harmless [Mr. Levandowski] . . . to the maximum extent permitted by applicable law . . . from and against any and all Expenses incurred by [Mr. Levandowski]" any claims brought by a Former Employer "arising out of or alleged to arise out of" among other things, Mr. Levandowski's breach of his "fiduciary duty or duty of loyalty to [his] Former Employer" and/or "breach [] of any non-solicitation, non-competition, confidentiality or similar restrictive covenant or agreement" between him and a Former Employer. Ex. A at § 2.1(a).

**ANSWER:** Uber admits that the language quoted in paragraph 164 appears in Section 2.1(a) of the Indemnification Agreement and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 164.

165. As defined in the Indemnification Agreement, "Expenses" includes reasonable attorneys' fees, costs associated with defense against a Former Employer's claim, and any awards, judgments, or any amounts paid or to be paid in settlement of Google's claims. *Id.* at 3.

**ANSWER:** Uber admits that page 3 of the Indemnification Agreement contains an Expenses definition and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 165.

166. Under Section 2.3 of the Indemnification Agreement, Uber is required to advance payment for Expenses within fifteen Business Days of a request for advancement.

**ANSWER:** Uber admits that Section 2.3 of the Indemnification Agreement provides provisions related to Expenses and respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 166.

167. On March 6, 2020, Mr. Levandowski requested that Uber advance payment for Google's judgment and the attorneys' fees and costs Mr. Levandowski had incurred between September 26, 2019 and February 29, 2020 as Expenses under Section 2.3.

**ANSWER:** Uber admits that on March 6, 2020, counsel for Levandowski sent a "Request for Advancement of Expenses Pursuant to Section 2.3 of the Indemnification Agreement" to Uber's

counsel and respectfully refers the Court to that letter for its complete and accurate contents. Uber denies the remaining allegations in paragraph 167.

168. Uber has refused to advance payment for the Expenses requested in the March 6 Request. Mr. Levandowski has paid many of the Expenses since Uber refused to advance payment.

**ANSWER:** Uber admits that it has not advanced payment to Levandowski pursuant to Levandowski's March 6, 2020 request for advancement of Expenses. Uber denies that Levandowski is entitled to indemnification or any payment of Expenses. Uber lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 168 and therefore denies the remaining allegations in paragraph 168.

169. Mr. Levandowski has fully performed his obligations under the Indemnification Agreement.

**ANSWER:** Uber denies the allegations in paragraph 169.

170. As a result of Uber's refusal to honor its obligations under the Indemnification Agreement, Mr. Levandowski has suffered damages at least in the amount of the Expenses he has paid and will be required to pay to continue funding this litigation against Uber, the cost of the chapter 11 proceedings and this adversary proceeding and having to liquidate assets in the middle of a pandemic to continue to pursue his rights under the Indemnification Agreement and in challenging Google's judgment.

**ANSWER:** Uber denies the allegations in paragraph 170.

#### **COUNT IV**

#### **(Declaratory Judgment – Uber's Rescission Claim)**

171. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully stated herein.

**ANSWER:** Uber restates and incorporates by reference as though fully set forth herein its answers to each of the allegations above.

172. In the Proof of Claim, Uber identifies itself as a creditor based on its purported rescission of the Indemnification Agreement.

**ANSWER:** Uber admits that it filed a Proof of Claim on July 6, 2020 in Bankruptcy Petition No. 20-30242 and that Levandowski named Uber as a creditor. Uber admits that the Indemnification Agreement has been rescinded. Uber denies the remaining allegations in paragraph 172.

173. In addition, Uber has refused to pay Expenses due under the Indemnification Agreement because of the purported rescission.

1           **ANSWER:** Uber admits that the Indemnification Agreement has been rescinded. Uber  
2 denies the remaining allegations in paragraph 173, and further states that it ceased paying Expenses  
3 for multiple reasons, including that it had no obligation to do so.

4           174. Mr. Levandowski contends that Uber waived any right to rescind because it expressly  
5 confirmed and ratified the Otto Trucking Merger Agreement, one key component of the April 11,  
6 2016 transactions, and thereby ratified the transaction Uber claims it was fraudulently induced into  
entering.

7           **ANSWER:** Uber denies the allegations in paragraph 174.

8           175. Mr. Levandowski also contends that Uber also impliedly waived, is estopped from  
9 asserting, and/or ratified any alleged fraudulent inducement on which Uber's purported rescission is  
based by entering into an amendment of the transaction Uber alleges it was fraudulently induced to  
enter into.

10          **ANSWER:** Uber denies the allegations in paragraph 175.

11          176. Mr. Levandowski further contends that Uber's rescission claim is barred by its  
12 unreasonable delay in rescinding the Indemnification Agreement, failure to return consideration  
provided, and actions by Uber that are inconsistent with a claim for rescission as described  
13 hereinabove.

14          **ANSWER:** Uber denies the allegations in paragraph 176.

15          177. Uber has not returned any consideration it received under the Indemnity Agreement,  
16 including Mr. Levandowski's devices, which it continues to retain through Stroz, as well as the  
consideration received under the full transaction for the Otto acquisition. Such failure is fatal to any  
17 rescission claim, especially where, as here, Uber's refusal or inability to return the consideration it  
received is due to its delay in exercising any purported right to rescission.

18          **ANSWER:** Uber admits that Levandowski provided a number of devices to Stroz. Upon  
19 information and belief, Uber admits that Stroz is still in possession of some or all of those devices.  
20 Uber denies that it was or is in possession of Levandowski's devices. Uber denies that it received  
21 any consideration under the Indemnification Agreement. Uber denies the remaining allegations in  
22 paragraph 177.

23          178. To the extent that Uber's ability to return the consideration received is impossible,  
24 this impossibility is due to Uber's delay in exercising the purported rescission after it controlled Mr.  
Levandowski's defense and settlement ability for years and benefited from Mr. Levandowski's  
cooperation with his defense and Uber's defense in the Waymo action.

25          **ANSWER:** Uber denies the allegations in paragraph 178.

26          179. Uber has also ratified any purported fraud and acted in ways inconsistent with  
27 rescission, including by affirming its obligations under the Indemnification Agreement in its public  
filings.

28          **ANSWER:** Uber denies the allegations in paragraph 179.

1 180. Uber's performance under the Indemnification Agreement for years and belated  
2 rescission of that agreement has substantially prejudiced Mr. Levandowski.

3 **ANSWER:** Uber denies the allegations in paragraph 180.

4 181. Finally, upon information and belief, Uber has released any claim for rescission as  
5 part of its release in the Waymo Settlement.

6 **ANSWER:** Uber denies the allegations in paragraph 181.

7 182. As a result of the acts described herein, a live controversy exists as to whether Uber  
8 has a right to rescind and whether its purported rescission is effective.

9 **ANSWER:** Uber denies the allegations in paragraph 182.

10 183. This issue is ripe for determination and requires a declaration as to Uber's right to  
11 rescind the Indemnification Agreement and whether Uber is a proper creditor in the Chapter 11 Case.

12 **ANSWER:** Uber denies the allegations in paragraph 183.

13 184. Mr. Levandowski therefore seeks a declaration that Uber has no right to rescind the  
14 Indemnification Agreement.

15 **ANSWER:** Uber denies the allegations in paragraph 184.

16 **COUNT V**

17 **(Declaratory Judgment and Damages: Rescission of Otto Transaction)**

18 185. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully stated  
19 herein.

20 **ANSWER:** Uber restates and incorporates by reference as though fully set forth herein its  
21 answers to each of the allegations above.

22 186. As shown herein, Mr. Levandowski denies that Uber has any right to rescind the  
23 Indemnity Agreement and Mr. Levandowski seeks a declaratory judgment regarding Uber's  
24 rescission claim/defense.

25 **ANSWER:** Uber denies the allegations in paragraph 186.

26 187. Alternatively, if the Court determines that Uber has rescinded the Indemnification  
27 Agreement, the entirety of the Otto transaction must also be rescinded and all consideration Uber  
28 received from the Otto transaction must be returned to Mr. Levandowski.

**ANSWER:** Uber denies the allegations in paragraph 187.

188. In agreeing to sell Otto to Uber and lead Uber's self-driving car program, Mr.  
Levandowski conveyed repeatedly to Uber's representatives that he was concerned that Google  
would sue him. Because of these concerns, Uber agreed to provided indemnity as key and  
indivisible part of the Otto transaction and as an inducement to Mr. Levandowski to sell Otto to  
Uber. Mr. Levandowski would not have entered into the Otto transaction without the Indemnity  
Agreement because of his well-founded fear of litigation against him by Google.

**ANSWER:** Uber admits that, prior to executing the Indemnification Agreement and Otto Agreement, Levandowski raised concerns that Google may bring litigation against him without a valid basis for doing so. Uber denies the remaining allegations in paragraph 188.

189. For this reason, on April 11, 2016, Uber and Mr. Levandowski executed documents for the acquisition of Otto, including the Indemnification Agreement. All of the agreements executed on April 11, 2016 are part of one single transaction that can not be divided.

**ANSWER:** Uber admits that on April 11, 2016, Uber and Levandowski executed certain documents, including the Indemnification Agreement. Uber denies the remaining allegations of paragraph 189.

**ANSWER:**

190. Uber's rescission of the Indemnification Agreement necessarily requires rescission of the entire Otto transaction, including returning all consideration related to the transaction, including the intellectual property Uber received from its acquisition of Otto.

**ANSWER:** Uber denies the allegations in paragraph 190.

191. Should the Court determine that Uber effectively rescinded the Indemnification Agreement, a live controversy exists as to whether Uber's rescission also rescinds the Otto transaction and requires return of all consideration Uber received from that transaction.

**ANSWER:** Uber denies the allegations in paragraph 191.

192. Mr. Levandowski therefore seeks a declaration that Uber has no right to rescind the Indemnification Agreement without also rescinding the Otto transaction and returning all consideration received from that deal.

**ANSWER:** Uber denies the allegations in paragraph 192.

193. In addition, Mr. Levandowski seeks damages, including any consequential damages, arising out of Uber's rescission of the Otto transaction.

**ANSWER:** Uber denies the allegations in paragraph 193.

## **COUNT VI**

### **(Declaration As to Unenforceability of Amendment and Termination of**

#### **Otto Trucking Agreement as to Anthony Levandowski)**

194. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully stated herein.

**ANSWER:** Uber restates and incorporates by reference as though fully set forth herein its answers to each of the allegations above.

1           195. Mr. Levandowski is a party to the Otto Trucking Agreement, including as to Section  
2       5.4 and 5.11.

3           **ANSWER:** Uber denies the allegations in paragraph 195. Answering further, the April 11,  
4       2016 Otto Trucking Agreement defines “parties” as the Company Unitholder Representative, Parent,  
5       Purchaser, Merger Sub, and the Company.

6           196. Section 5.4 allowed Mr. Levandowski to form a new trucking company and to obtain  
7       the IP License from Uber if Uber failed to satisfy its funding obligations to Otto Trucking in the  
8       three years after closing on that transaction.

9           **ANSWER:** Uber respectfully refers the Court to the Otto Trucking Agreement for its  
10       complete and accurate contents. Uber denies the remaining allegations in paragraph 196. Answering  
11       further, Uber states that the conditions precedent for Levandowski to obtain an IP License were not  
12       met, that the Otto Trucking Agreement was amended and terminated according to its terms, and that  
13       the New Otto Trucking Merger Agreement (“New Otto Trucking Agreement”) did not provide  
14       Levandowski with any right to an IP License. Uber refers the Court to the New Otto Trucking  
15       Agreement, attached as Exhibit 2, for its complete and accurate contents.

16           197. Section 5.11 allowed Mr. Levandowski to form a new trucking company and demand  
17       that Uber provide him with the IP License for use in the new trucking company if Uber terminated  
18       the Otto Trucking Agreement after acquiring Otto.

19           **ANSWER:** Uber respectfully refers the Court to the Otto Trucking Agreement for its  
20       complete and accurate contents. Uber denies the remaining allegations in paragraph 197. Answering  
21       further, Uber states that the conditions precedent for Levandowski to obtain an IP license and for  
22       Uber to support a new trucking company were not met, that the Otto Trucking Agreement, including  
23       Section 5.11, was terminated, and that the New Otto Trucking Agreement did not provide for an IP  
24       License to Levandowski.

25           198. Uber closed on its acquisition of Otto on August 18, 2016.

26           **ANSWER:** Uber denies the allegations in paragraph 198. Answering further, Uber closed  
27       on its acquisition of Otto pursuant to the New Otto Trucking Agreement on August 23, 2016.

28           199. In November 2017, Uber provided notice that it was exercising its option to acquire  
      Otto Trucking.

**ANSWER:** Uber admits the allegations in paragraph 199.

          200. After providing notice, Uber stalled the closing of the Otto Trucking acquisition.



1           **ANSWER:** Uber denies the allegations in paragraph 200.

2           201. Upon information and belief, Uber stalled the closing of the Otto Trucking acquisition  
3 so that it could work out a settlement with Waymo/Google in the trade secrets action. During that  
4 time, Uber was controlling Mr. Levandowski's defense, including regarding settlement.

5           **ANSWER:** Uber denies the allegations in paragraph 201.

6           202. Upon information and belief, Uber agreed in the Waymo settlement to terms that gave  
7 away Mr. Levandowski's rights.

8           **ANSWER:** Uber denies the allegations in paragraph 202.

9           203. Upon information and belief, because of its agreement in the Waymo Settlement to  
10 never hire or do business with Mr. Levandowski again, Uber continued to delay the Otto Trucking  
11 closing and told Mr. Levandowski that it would not close the transaction if he was still part of the  
12 company and would not in any event give him the IP license.

13           **ANSWER:** Uber admits that, after it terminated Levandowski for cause, it expressed  
14 concerns to Levandowski about continuing a relationship with him. Uber denies the remaining  
15 allegations in paragraph 203. Answering further, Uber states that Levandowski sold his interest in  
16 Otto Trucking and Uber refers the Court to the Unit Purchase Agreements, attached as Exhibits 3 and  
17 4, for their complete and accurate contents. Following Levandowski's sale of his interests in Otto  
18 Trucking, the Otto Trucking Agreement was amended and terminated.

19           204. Uber threatened to leave the transaction in limbo and force Mr. Levandowski to  
20 engage in protracted litigation to enforce his rights under the Otto Trucking Merger Agreement.

21           **ANSWER:** Uber denies the allegations in paragraph 204.

22           205. Faced with the prospect of litigating immediately with a multi-billion dollar company  
23 in the midst of other active litigation—the defense of which was under Uber's control—and a  
24 criminal investigation, Uber's actions coerced Mr. Levandowski to resign from Otto Trucking and to  
25 sell his interest in the company at a significant discount.

26           **ANSWER:** Uber admits that Levandowski resigned from Otto Trucking and sold his  
27 interest in Otto Trucking. Uber denies the remaining allegations in paragraph 205.

28           206. Uber acquired Otto Trucking on August 5, 2018.

**ANSWER:** Uber admits that it entered into an Agreement and Plan of Merger with Otto  
Trucking pursuant to the New Otto Trucking Agreement on August 5, 2018. Uber denies the  
remaining allegations in paragraph 206.

          207. On August 31, 2020, in response to Mr. Levandowski's complaint, Uber answered  
and alleged that it had terminated the Otto Trucking Agreement and had acquired Otto Trucking  
pursuant to a new Otto Trucking agreement dated August 5, 2018.

**ANSWER:** Uber admits that it filed its Answer to Levandowski's complaint on August 31, 2020, and respectfully refers the Court to the Answer for its complete and accurate contents. Uber further admits that the Otto Trucking Agreement was terminated and that Otto Trucking was acquired pursuant to the New Otto Trucking Merger Agreement dated August 5, 2018. Uber denies the remaining allegations in paragraph 207.

208. This was the first time that Mr. Levandowski learned that Uber had terminated the Otto Trucking Agreement.

**ANSWER:** Uber denies the allegations in paragraph 208.

209. On September 11, 2020, Uber produced a copy of an Amendment and Termination of the Otto Trucking Agreement dated August 5, 2018 (the "Termination Agreement") and an Agreement and Plan of Merger for Otto Trucking LLC dated August 5, 2018 (the "New Otto Trucking Agreement").

**ANSWER:** Uber admits the allegations in paragraph 209.

210. Upon receipt, of the Termination Agreement, Mr. Levandowski learned for the first time that Uber and Otto Trucking had agreed to terminate the Otto Trucking Agreement.

**ANSWER:** Uber denies the allegations in paragraph 210.

211. Mr. Levandowski also learned that while the agreement affirmed his status as a party as to Section 5.11, it purported to terminate his rights under that provision without his knowledge or consent.

**ANSWER:** Uber denies the allegations in paragraph 211. Answering further, Levandowski was not a Party to the Otto Trucking Agreement as defined in the Agreement, and Uber respectfully refers the Court to the Agreement for its complete and accurate contents. Uber further states that neither Levandowski's knowledge nor his consent was required to terminate the Otto Trucking Agreement or any term thereof, and in any event, Levandowski had knowledge that the Otto Trucking Agreement was terminated.

212. Indeed, Mr. Levandowski did not sign the Termination Agreement and has never agreed to relinquish his right to the IP License.

**ANSWER:** Uber admits that Levandowski did not sign the Termination Agreement. Uber refers the Court to the Amendment and Termination Agreement, attached as Exhibit 5, for its complete and accurate contents. Uber denies the remaining allegations in paragraph 212. Answering further, Uber states that neither Levandowski's signature, knowledge, agreement, nor his consent was required to terminate the Otto Trucking Agreement or any term thereof.

213. A controversy exists as to whether Uber and Otto Trucking's purported termination of Section 5.11 is enforceable and effective as to Mr. Levandowski.

**ANSWER:** Uber denies the allegations in paragraph 213.

214. Mr. Levandowski thus seeks a declaration that Uber and Otto Trucking could not and did not terminate his rights under Section 5.11 when it executed the Termination Agreement without his consent or signature on that document.

**ANSWER:** Uber denies the allegations in paragraph 214.

### **COUNT VII**

#### **(Specific Performance of Uber's Obligations to Provide Mr. Levandowski an IP License and Form an New Trucking Company Under Section 5.11 of Otto Trucking Agreement)**

215. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully stated herein.

**ANSWER:** Uber restates and incorporates by reference as though fully set forth herein its answers to each of the allegations above.

216. In addition to requiring the Indemnification Agreement, Mr. Levandowski also conditioned his sale of Otto to Uber on Uber's support for his autonomous trucking business. Uber agreed to this condition in the Otto Trucking Agreement.

**ANSWER:** Uber admits that on April 11, 2016, the Indemnification Agreement, the Otto Agreement, and the Otto Trucking Agreement were each executed, and Uber respectfully refers the Court to the Agreements for their complete and accurate contents. Uber denies the remaining allegations in paragraph 216.

217. Under the Otto Trucking Agreement, Uber received an option to acquire Otto Trucking.

**ANSWER:** Uber admits that the Otto Trucking Agreement contained a provision for a Call Option Period granting Uber a "right, but in no circumstances the obligation" to acquire Otto Trucking. Uber respectfully refers the Court to the Agreement for its complete and accurate contents. Uber denies the remaining allegations in paragraph 217.

218. Uber closed on its acquisition of Otto on August 18, 2016. The effect of the acquisition of Otto obligated Uber to support Mr. Levandowski's trucking business as the only scenario where Uber could walk away from Otto Trucking was if Uber did not acquire Otto. For example, even if Uber terminated the Otto Trucking Agreement after acquired Otto, Uber was required to give Mr. Levandowski an exclusive license to use Uber's self-driving technology in the field of trucking to form a new trucking company outside of Uber. The terms of the exclusive license are described at Exhibits E and F of the Otto Trucking Agreement.

1           **ANSWER:** Uber admits that it closed on the acquisition of Otto in August 2016. Uber  
2 denies the remaining allegations in paragraph 218.

3           219. In late November 2017, Uber exercised its right to acquire Otto Trucking by  
4 providing notice of its decision.

5           **ANSWER:** Uber admits that in November 2017, it provided notice to Otto Trucking that it  
6 would exercise its option under the Otto Trucking Agreement. Uber denies the remaining allegations  
7 in paragraph 219.

8           220. On August 5, 2018, Uber terminated the Otto Trucking Agreement.

9           **ANSWER:** Uber admits the allegations in paragraph 220.

10           221. Uber hid its termination of the Otto Trucking Agreement from Mr. Levandowski for  
11 over two years, finally disclosing its purported termination of the Otto Trucking Agreement only  
12 recently in its answer to the Complaint.

13           **ANSWER:** Uber denies the allegations in paragraph 221. Answering further,  
14 Levandowski was aware of the forthcoming termination of the Otto Trucking Agreement and the  
15 New Otto Trucking Merger Agreement as of August 1, 2018 at the latest.

16           222. Under Section 5.11, because Uber acquired Otto and obtained the benefits of that  
17 acquisition, Uber is required to provide a license to these patents and any other patents or intellectual  
18 property related to autonomous trucking to Mr. Levandowski for use in the field of trucking.

19           **ANSWER:** Uber denies the allegations in paragraph 222. Answering further,  
20 Levandowski sold his interest in Otto Trucking on August 1, 2018; on August 5, 2018, the Otto  
21 Trucking Agreement was amended and terminated and Uber and Otto Trucking entered into the New  
22 Otto Trucking Agreement; and Levandowski had no continuing rights under the Otto Trucking  
23 Agreement, and even if he still had rights under the Otto Trucking Agreement, he failed to satisfy the  
24 conditions precedent to any obligation by Uber to provide Levandowski with an IP License.

25           223. Mr. Levandowski seeks specific performance of Uber's obligation under Section 5.11.  
26 Specifically, Mr. Levandowski seeks an order requiring Uber to provide a company formed by Mr.  
27 Levandowski the IP License in a form consistent with Exhibit E and F of the Otto Trucking  
28 Agreement.

**ANSWER:** Uber denies the allegations in paragraph 223. Answering further,  
Levandowski sold his interest in Otto Trucking on August 1, 2018; on August 5, 2018, the Otto  
Trucking Agreement was amended and terminated and Uber and Otto Trucking entered into the New  
Otto Trucking Agreement; and Levandowski had no continuing rights under the Otto Trucking

1 Agreement, and even if he still had rights under the Otto Trucking Agreement, he failed to satisfy the  
2 conditions precedent to any obligation by Uber to provide Levandowski with an IP License.

3 224. A search for autonomous driving related patents yielded over hundreds of results for  
4 patents owned by Uber. **Exhibit Q** is a copy of the patent search result for Uber's self-driving  
related patents.

5 **ANSWER:** Uber lacks knowledge or information sufficient to form a belief as to the truth  
6 of the allegations in paragraph 224 and therefore denies the allegations.

7 225. Mr. Levandowski has performed all obligations under the Otto Trucking Agreement.

8 **ANSWER:** Uber denies the allegations in paragraph 225.

9 226. Although Mr. Levandowski contends that the ten business day period referenced in  
10 Section 5.11 relates to how "promptly" his right to the IP License becomes available after  
11 termination of the Otto Trucking Agreement and that there is no deadline to provide such notices, on  
12 September 21, 2020, within ten business days of receipt of the Termination Agreement, Mr.  
Levandowski provided Uber with written notice that he is exercising his right to form the new  
13 trucking company, and has requested that Uber provide the IP License and work together to sign and  
prepare organization documents for the new company. **Exhibit R** is a copy of the letter notifying  
Uber of Mr. Levandowski's election of the right to obtain the IP License.

14 **ANSWER:** Uber denies the allegations in paragraph 226. Answering further, Section 5.11  
15 of the Otto Trucking Agreement required that the Company Founders provide written notice "no  
16 more than 10 Business Days" from the date of termination of the Agreement of any election to form  
17 a new trucking company. Uber respectfully refers the Court to the Agreement for its complete and  
18 accurate contents. Answering further, Levandowski sold his interest in Otto Trucking on August 1,  
19 2018; on August 5, 2018, the Otto Trucking Agreement was amended and terminated and Uber and  
20 Otto Trucking entered into the New Otto Trucking Agreement; and Levandowski had no continuing  
21 rights under the Otto Trucking Agreement, and even if he still had rights under the Otto Trucking  
22 Agreement, he failed to satisfy the conditions precedent to any obligation by Uber to provide  
Levandowski with an IP License.

23 227. Uber has refused to provide the requested license.

24 **ANSWER:** Uber admits that it has not provided an IP License to Levandowski related to a  
25 new trucking company. Uber denies the remaining allegations in paragraph 227. Answering further,  
26 Uber denies that it has any obligations to provide any such IP License to Levandowski.

27 228. Mr. Levandowski will be irreparably harmed by Uber's refusal to provide the IP  
28 License and to form the trucking company as agreed.

**ANSWER:** Uber denies the allegations in paragraph 228.

229. Uber received adequate consideration, at least in the form of its acquisition of Otto, in exchange for agreeing to Mr. Levandowski's right to lead an autonomous trucking business within Uber or with Uber's IP License.

**ANSWER:** Uber denies the allegations in paragraph 229.

230. A mutuality of remedies exists as the agreement provides for a method for adjudicating disputes, including allowing either party to sue for specific performance.

**ANSWER:** Uber denies the allegations in paragraph 230.

231. The contract is sufficiently definite in requiring that Uber must provide the IP License to Mr. Levandowski on terms consistent with Exhibits E and F of the Otto Trucking Agreement if the Otto Trucking Agreement was terminated after Uber acquired Otto.

**ANSWER:** Uber denies the allegations in paragraph 231. Answering further, Levandowski sold his interest in Otto Trucking on August 1, 2018; on August 5, 2018, the Otto Trucking Agreement was amended and terminated and Uber and Otto Trucking entered into the New Otto Trucking Agreement; and Levandowski had no continuing rights under the Otto Trucking Agreement, and even if he still had rights under the Otto Trucking Agreement, he failed to satisfy the conditions precedent to any obligation by Uber to provide Levandowski with an IP License.

232. Therefore, Mr. Levandowski seeks an order from the Court requiring Uber to provide the IP License as required by Section 5.11 of the Otto Trucking Agreement and to work with Mr. Levandowski to form the new trucking company.

**ANSWER:** Uber denies the allegations in paragraph 232.

233. In the alternative, Mr. Levandowski seeks damages for Uber's breach of Section 5.11 of the Otto Trucking Agreement, including damages for the value of the IP License and either the value of Uber Freight, which is estimated as \$4 billion once Uber closes on its latest round of financing, and/or the trucking company he should have been able to form and operate using the IP License and lost profits from that company.

**ANSWER:** Uber denies the allegations in paragraph 233.

### **COUNT VIII**

#### **(Declaration Regarding Uber's Fiduciary Duty To Shut Down Uber Freight)**

234. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully stated herein.

**ANSWER:** Uber restates and incorporates by reference as though fully set forth herein its answers to each of the allegations above.



235. In addition to requiring Uber to provide the IP License upon termination, Section 5.11 of the Otto Trucking Agreement also requires Uber to become a member of a new limited liability trucking company formed by Mr. Levandowski.

**ANSWER:** Uber denies the allegations in paragraph 235. Answering further, Levandowski sold his interest in Otto Trucking on August 1, 2018; on August 5, 2018, the Otto Trucking Agreement was amended and terminated and Uber and Otto Trucking entered into the New Otto Trucking Agreement; and Levandowski had no continuing rights under the Otto Trucking Agreement, and even if he still had rights under the Otto Trucking Agreement, he failed to satisfy the conditions precedent to any obligation by Uber to provide Levandowski with an IP License.

236. Uber's membership interest was to be 50% of the then available shares.

**ANSWER:** Uber denies the allegations in paragraph 236. Answering further, Levandowski sold his interest in Otto Trucking on August 1, 2018; on August 5, 2018, the Otto Trucking Agreement was amended and terminated and Uber and Otto Trucking entered into the New Otto Trucking Agreement; and Levandowski had no continuing rights under the Otto Trucking Agreement, and even if he still had rights under the Otto Trucking Agreement, he failed to satisfy the conditions precedent to any obligation by Uber to provide Levandowski with an IP License.

237. The material terms of Uber's membership are provided in Exhibit F to the Otto Trucking Agreement, referenced in Section 5.11.

**ANSWER:** Uber denies the allegations in paragraph 237. Answering further, Levandowski sold his interest in Otto Trucking on August 1, 2018; on August 5, 2018, the Otto Trucking Agreement was amended and terminated and Uber and Otto Trucking entered into the New Otto Trucking Agreement; and Levandowski had no continuing rights under the Otto Trucking Agreement, and even if he still had rights under the Otto Trucking Agreement, he failed to satisfy the conditions precedent to any obligation by Uber to provide Levandowski with an IP License.

238. Exhibit F addressed fiduciary duties of managers during the initial development of the company, requiring that they owe the duties to the company and the holders of equity in that company the same fiduciary duties that would be owed in a corporation until the company raises at least \$17,500,000 in investments.

**ANSWER:** Uber denies the allegations in paragraph 238. Answering further, Levandowski sold his interest in Otto Trucking on August 1, 2018; on August 5, 2018, the Otto Trucking Agreement was amended and terminated and Uber and Otto Trucking entered into the New

1 Otto Trucking Agreement; and Levandowski had no continuing rights under the Otto Trucking  
 2 Agreement, and even if he still had rights under the Otto Trucking Agreement, he failed to satisfy the  
 3 conditions precedent to any obligation by Uber to provide Levandowski with an IP License.

4 239. Exhibit F, however, does not contain any limitation or waiver of the statutory  
 5 fiduciary duties owed by members of the company to the company and other members.

6 **ANSWER:** Uber denies the allegations in paragraph 239. Answering further,  
 7 Levandowski sold his interest in Otto Trucking on August 1, 2018; on August 5, 2018, the Otto  
 8 Trucking Agreement was amended and terminated and Uber and Otto Trucking entered into the New  
 9 Otto Trucking Agreement; and Levandowski had no continuing rights under the Otto Trucking  
 10 Agreement, and even if he still had rights under the Otto Trucking Agreement, he failed to satisfy the  
 11 conditions precedent to any obligation by Uber to provide Levandowski with an IP License.

12 240. As such, once formed, Uber owes the new trucking company and Mr. Levandowski  
 13 statutory fiduciary duties, including the duty not to compete with the company, including by  
 continuing to operate Uber Freight.

14 **ANSWER:** Uber denies the allegations in paragraph 240. Answering further,  
 15 Levandowski sold his interest in Otto Trucking on August 1, 2018; on August 5, 2018, the Otto  
 16 Trucking Agreement was amended and terminated and Uber and Otto Trucking entered into the New  
 17 Otto Trucking Agreement; and Levandowski had no continuing rights under the Otto Trucking  
 18 Agreement, and even if he still had rights under the Otto Trucking Agreement, he failed to satisfy the  
 19 conditions precedent to any obligation by Uber to provide Levandowski with an IP License.

20 241. In its answer, Uber denies that Exhibit F contemplates that Uber would owe Mr.  
 21 Levandowski and the new trucking company fiduciary duties that would prevent it from competing  
 with the company.

22 **ANSWER:** Uber denies that it owes fiduciary duties to a company that does not exist and  
 23 denies the remaining allegations in paragraph 241. Answering further, Levandowski sold his interest  
 24 in Otto Trucking on August 1, 2018; on August 5, 2018, the Otto Trucking Agreement was amended  
 25 and terminated and Uber and Otto Trucking entered into the New Otto Trucking Agreement; and  
 26 Levandowski had no continuing rights under the Otto Trucking Agreement, and even if he still had  
 27 rights under the Otto Trucking Agreement, he failed to satisfy the conditions precedent to any  
 28 obligation by Uber to provide Levandowski with an IP License.

242. As such, a controversy exists as to what fiduciary duties Uber will owe in the new trucking company to be formed consistent with the terms of Section 5.11 and Exhibit F of the Otto Trucking Agreement and whether Uber may continue to operate Uber Freight once that company is formed.

**ANSWER:** Uber denies the allegations in paragraph 242.

243. Mr. Levandowski requests a declaration as to Uber's obligations and fiduciary duties to Mr. Levandowski and the new trucking company as provided in Section 5.11 and Exhibit F of the Otto Trucking Agreement, including, Uber's obligation to shut down Uber Freight.

**ANSWER:** Uber denies the allegations in paragraph 243.

### **COUNT IX**

#### **(Breach of Covenant of Good Faith and Fair Dealing )**

244. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully stated herein.

**ANSWER:** Uber restates and incorporates by reference as though fully set forth herein its answers to each of the allegations above.

245. In addition to receiving indemnity, Mr. Levandowski conditioned his sale of Otto on Uber supporting his autonomous trucking business. Uber agreed to that condition and on April 11, 2016, at the same time it executed the Otto Agreement, Uber executed the Otto Trucking Agreement.

**ANSWER:** Uber admits that on April 11, 2016, the Indemnification Agreement, the Otto Agreement, and the Otto Trucking Agreement were each executed and respectfully refers the Court to the Agreements for their complete and accurate contents. Uber denies the remaining allegations in paragraph 245. Answering further, Uber states that Levandowski sold his interest in Otto Trucking on August 1, 2018, and the Otto Trucking Agreement was amended and terminated on August 5, 2018.

246. The Otto Trucking Agreement includes an implied covenant of good faith and fair dealing. The implied covenant ensures that neither party may engage in arbitrary or unreasonable conduct and thereby prevent the other party from receiving the fruits of the bargain.

**ANSWER:** Paragraph 246 asserts legal conclusions to which no response is required. To the extent a response is required, Uber denies the allegations in paragraph 246.

247. The intent of the parties for Mr. Levandowski to be able to continue to pursue the trucking business he left Google to start with Uber's support in exchange for Mr. Levandowski selling Otto to Uber.

**ANSWER:** Uber denies the allegations in paragraph 247.

248. This intent is reflected in the Otto Trucking Agreement as the only scenario where Uber could walk away from Otto Trucking and not support Mr. Levandowski's trucking business was if Uber did not acquire Otto.

**ANSWER:** Uber denies the allegations in paragraph 248. Answering further, Uber states that Levandowski sold his interest in Otto Trucking on August 1, 2018, and the Otto Trucking Agreement was amended and terminated on August 5, 2018.

249. After acquiring Otto, Uber had two options for supporting the trucking business. It could acquire Otto Trucking and appoint Mr. Levandowski as the non-executive chairman of that business.

**ANSWER:** Uber denies the allegations in paragraph 249.

250. In the alternative, Uber could terminate the acquisition of Otto Trucking, but support an outside trucking venture started by Mr. Levandowski as an investor. Uber was obligated to provide an exclusive license to its self-driving technology for Mr. Levandowski to use in the field of trucking in exchange for membership in Mr. Levandowski's new company. The IP License was an exclusive license for trucking, which barred Uber from competing with Mr. Levandowski's trucking business. Uber's membership interest in Mr. Levandowski's new company also prevented Uber from competing with that business based on the statutory duties owed by members of an LLC.

**ANSWER:** Uber denies the allegations in paragraph 250. Answering further, Uber states that Levandowski failed to satisfy the conditions precedent to Uber's obligation to provide Levandowski the IP License.

251. Uber did neither.

**ANSWER:** Uber denies the allegations in paragraph 251.

252. Upon information and belief, Uber stalled the closing of the Otto Trucking acquisition so that it could work out a settlement with Waymo/Google in the trade secrets action. During that time, Uber was in control of Mr. Levandowski's defense and settlement prospects, and had barred Mr. Levandowski from participating in the settlement discussion or discussing settlement directly with Google.

**ANSWER:** Uber denies the allegations in paragraph 252.

253. Upon information and belief, because of its agreement in the Waymo Settlement to never hire or do business with Mr. Levandowski again, Uber continued to delay the Otto Trucking closing and told Mr. Levandowski that it would not close the transaction if he was still part of the company and would not in any event give him the IP license.

**ANSWER:** Uber denies the allegations in paragraph 253. Answering further, Uber states that it used commercially reasonable efforts to close the Otto Trucking transaction and that it expressed concerns with continuing a business relationship with Levandowski because, among other things, Levandowski was terminated from Uber for Cause.

254. Uber threatened to leave the transaction in limbo and force Mr. Levandowski to engage in protracted litigation to enforce his rights under the Otto Trucking Merger Agreement.

**ANSWER:** Uber denies the allegations in paragraph 254.

255. Faced with the prospect of litigating immediately with a multi-billion dollar company in the midst of other active litigation—the defense of which was under Uber’s control—and a criminal investigation, Uber’s actions coerced Mr. Levandowski to resign from Otto Trucking and to sell his interest in the company at a significant discount.

**ANSWER:** Uber admits that Levandowski resigned from Otto Trucking and sold his interest in Otto Trucking. Uber denies the remaining allegations in paragraph 255.

256. But Mr. Levandowski, as a Company Founder and in his individual capacity, remained a party to the Otto Trucking Agreement with respect to Section 5.4 and 5.11 of that agreement and a beneficiary of the remainder of the Otto Trucking Agreement independent of his prior status as a unitholder of the company.

**ANSWER:** Uber denies the allegations in paragraph 256.

257. Uber and Otto Trucking agreed between them, without Mr. Levandowski’s agreement or consent, to terminate the Otto Trucking Agreement.

**ANSWER:** Uber admits that the Otto Trucking Agreement was terminated. Uber denies the remaining allegations in paragraph 257. Answering further, neither Levandowski’s agreement nor his consent was required to terminate the Otto Trucking Agreement.

258. Uber and Otto Trucking hid the termination from him for two years.

**ANSWER:** Uber denies the allegations in paragraph 258. Answering further, Levandowski was aware of the forthcoming termination of the Otto Trucking Agreement and the New Otto Trucking Merger Agreement as of August 1, 2018 at the latest, as evidenced by two agreements he signed that reference the New Otto Trucking Agreement, which in turn reference the termination of the Otto Trucking Agreement.

259. Despite terminating the Otto Trucking Agreement after acquiring Otto, Uber refused to provide Mr. Levandowski with the IP License, and in fact, Uber and Otto Trucking agreed, without Mr. Levandowski’s agreement or consent and without providing any consideration, to terminate Mr. Levandowski’s individual rights under the Otto Trucking Agreement.<sup>1</sup>

**ANSWER:** Uber admits that the Otto Trucking Agreement was terminated after Uber acquired Otto. Uber denies the remaining allegations in paragraph 259. Answering further, neither Levandowski’s agreement nor his consent was required to terminate the Otto Trucking Agreement,

<sup>1</sup> Mr. Levandowski contends, as alleged in Count VII that such agreement to terminate Levandowski’s rights was ineffective and unenforceable.

including any rights Levandowski had in his individual capacity. Levandowski sold his interest in Otto Trucking on August 1, 2018; on August 5, 2018, the Otto Trucking Agreement was amended and terminated and Uber and Otto Trucking entered into the New Otto Trucking Agreement; and Levandowski had no continuing rights under the Otto Trucking Agreement, and even if he still had rights under the Otto Trucking Agreement, he failed to satisfy the conditions precedent to any obligation by Uber to provide Levandowski with an IP License.

260. Uber and Otto Trucking then entered into a separate agreement whereby Uber proceeded to acquire Otto Trucking and started Uber Freight without Mr. Levandowski, the trucking business Uber had promised that Mr. Levandowski would lead.

**ANSWER:** Uber admits that it acquired Otto Trucking pursuant to the New Otto Trucking Agreement dated August 5, 2018. Uber denies the remaining allegations in paragraph 260.

261. In fact, the parties agreed in the New Trucking Agreement to terms intended to keep Mr. Levandowski out of the company.

**ANSWER:** Uber denies the allegations in paragraph 261.

262. As a party to section 5.4 and 5.11 and as a beneficiary to the remainder of the Otto Trucking Agreement, Mr. Levandowski has a right to enforce that agreement, including the covenant of good faith and fair dealing.

**ANSWER:** Uber denies the allegations in paragraph 262.

263. To the extent that Mr. Levandowski has any obligations under that agreement, he has satisfied them.

**ANSWER:** Uber denies the allegations in paragraph 263.

264. Uber's actions described herein were unreasonable, made in bad faith, and have deprived Mr. Levandowski of the fruits of the bargain, including the agreed-to benefit of running a trucking business with Uber's support.

**ANSWER:** Uber denies the allegations in paragraph 264.

265. By preventing Mr. Levandowski from obtaining the benefits of the Otto Trucking Agreement, Uber has violated the implied covenant of good faith and fair dealing.

**ANSWER:** Uber denies the allegations in paragraph 265.

266. After Mr. Levandowski's forced divestment, Uber's refusal to provide the IP License and for the new trucking company, and Uber's acquisition of Otto Trucking to form Uber Freight, Uber continued to operate that business. Uber Freight has reported hundreds of millions in revenue since its creation and Mr. Ron, who heads Uber Freight, stated that he and Uber "think there is a very clear path to profitability."



**ANSWER:** Uber admits that it acquired Otto Trucking and further states that it acquired Otto Trucking pursuant to the New Otto Trucking Agreement dated August 5, 2018. Uber admits that Mr. Ron is head of Uber Freight. Uber admits that Mr. Ron made a public statement that is reported at <https://finance.yahoo.com/news/uber-freight-to-investors-theres-a-very-clear-path-to-profitability-232536480.html>, and refers to that Court to the article for its complete and accurate contents. Uber denies the remaining allegations in paragraph 266.

267. As a result of Uber's breaches, Mr. Levandowski has suffered damages in an amount to be proven at trial, which amount should be at least \$4.128 billion.

**ANSWER:** Uber denies the allegations in paragraph 267.

### **COUNT X**

#### **(Objection to Claim)**

268. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully stated herein.

**ANSWER:** Uber restates and incorporates by reference as though fully set forth herein its answers to each of the allegations above.

269. For the reasons set forth above, the Indemnity Agreement is not subject to rescission and, if it had been, Uber waived its right to assert such remedy.

**ANSWER:** Uber denies the allegations in paragraph 269.

270. For the reasons set forth above, Uber is liable under the Indemnity Agreement to advance his Expenses (as defined in the Indemnification Agreement).

**ANSWER:** Uber denies the allegations in paragraph 270.

271. For the reasons set forth above, Mr. Levandowski generally denies the evidentiary bases upon which the Proof of Claim is based and specifically denies that (a) Uber was fraudulently induced to enter into the Indemnity Agreement, (b) Mr. Levandowski failed to comply with his obligations under the Indemnity Agreement, and (c) Uber's obligations under the Indemnity Agreement are subject to allocation as asserted in the Proof of Claim, which in any event, cannot be adjudicated until after Uber satisfies its obligations under the Indemnification Agreement.

**ANSWER:** Uber denies the allegations in paragraph 271.

272. For the reasons set forth above, any claim for offset or contribution is also undermined by its active participation in the conduct at issue in the Waymo Action and the Google arbitration as it (a) encouraged, if not directed, Mr. Levandowski to recruit Google employees to join Otto and Uber, and (b) knew about Mr. Levandowski's retention of Google information and access of the one file at issue in the plea agreement after he left Google.

**ANSWER:** Uber denies the allegations in paragraph 272.

1           273. For the reasons set forth above, Mr. Levandowski denies that Uber has any right to  
2 contribution from Mr. Levandowski for the Waymo settlement. Waymo did not prove that Mr.  
3 Levandowski misappropriated any trade secrets in that case. As for the one file that Mr.  
4 Levandowski accessed after he left Google, Uber was well aware of that conduct and proceeded to  
5 acquire Mr. Levandowski's company and work with him anyway. Moreover, Mr. Levandowski's  
6 guilty plea that resulted in a total restitution amount of approximately \$750,000 further demonstrates  
7 the unreasonableness of Uber's decision to settle with Waymo for \$245,000,000 in stock, among  
8 other consideration. In addition, to the extent that any trade secrets were taken and used at Uber,  
9 those trade secrets did not come from Mr. Levandowski, but rather a different former Google  
10 employee. Indeed, as admitted in Uber's public statements, Uber's self-driving software—an area  
11 that Mr. Levandowski did not work on at Google or Uber—contained problematic functions that will  
12 require it to enter into a license agreement with Waymo for use of Waymo's intellectual property.  
13 Upon information and belief, the Waymo Settlement, entered into after discovery of possible  
14 misconduct relating to Uber's source code, settled issues relating to theft of trade secrets by  
15 individuals who are not Mr. Levandowski.

9           **ANSWER:** Uber denies the allegations in paragraph 273.

10           274. Mr. Levandowski therefore seeks disallowance in full of the Proof of Claim.

11           **ANSWER:** Uber denies the allegations in paragraph 274.

## **AFFIRMATIVE AND OTHER DEFENSES**

In addition to its answers to the allegations set forth above, and without assuming the burden of proof on any claims, defenses, or legal or factual issues that would otherwise rest with Levandowski, Uber asserts the following affirmative and other defenses to certain of the claims asserted against Uber: with respect to Count I, Uber asserts Affirmative Defenses 15 and 16; with respect to Counts II and III, Uber asserts Affirmative Defenses 1-10; with respect to Count IV, Uber asserts only Affirmative Defense 7; with respect to Counts V-IX, Uber asserts Affirmative Defenses 7-14; and with respect to Count X, Uber asserts Affirmative Defense 10. Affirmative Defense 17 is asserted as to the fact of Google's intervention into Count IV, but not as to the substance of the claim set forth in Count IV.

1. **Indemnification For Disgorgement Is Barred By Public Policy.** Levandowski's claims in Counts II and III for indemnification of the Salary and Regular Compensation ("Related Compensation"), Chauffeur Bonus, and prejudgment interest associated with the same fail because indemnification for disgorgement is impermissible in California as a matter of public policy. The Arbitration Award and subsequent judgment, for which Levandowski seeks indemnification, order Levandowski to disgorge payments wrongfully obtained from Google. As a matter of law, the Related Compensation and Chauffeur Bonus never belonged to Levandowski. Under California law, Uber is not required or permitted to indemnify Levandowski for the disgorgement ordered in the Arbitration Award and judgment. To the extent that any term in the Indemnification Agreement could be read to indemnify Levandowski against disgorgement of monies that did not belong to him, it is void and unenforceable as contrary to public policy and the law. Any amount awarded for prejudgment interest related to an award of disgorgement is likewise unenforceable.

2. **Expenses Reduced By Amounts Paid By Third Party.** Levandowski's claims in Counts II and III for indemnification for the Related Compensation, Chauffeur Bonus, and prejudgment interest related to it fail because Section 2.4(b) of the Indemnification Agreement states that "there shall be deducted from such Expenses an amount equal to the amount of any proceeds actually received by any Indemnified Person from any third-party insurer or from any other third parties in connection with such Expenses." The \$127 million payment to Levandowski, related to the

1 Related Compensation and Chauffeur Bonus, was a payment by a third party, Google, to  
2 Levandowski, an Indemnified Person, upon which Levandowski's claim for indemnification is  
3 based. Levandowski is not entitled to indemnification for that amount, or for prejudgment interest  
4 related to that amount.

5 **3. Indemnification For Wrongful, Unlawful and Felonious Activity Is Barred.**

6 Levandowski's claims in Counts II and III are barred in whole or in part, by California Civil Code  
7 Sections 2773 and 2774. An agreement to indemnify Levandowski against wrongful conduct  
8 committed after April 11, 2016 that Levandowski knew to be wrongful is void and unenforceable  
9 pursuant to California Civil Code § 2773. Levandowski knowingly engaged in wrongful conduct  
10 after April 11, 2016, including by concealing his role in Tyto and concealing his theft of trade  
11 secrets from Google, all in order to deceive Google so as to receive the second installment of the  
12 Chauffeur Bonus from Google under false pretenses. The foregoing is not an exhaustive list of  
13 Levandowski's wrongful activity after April 11, 2016. Additionally, under California Civil Code §  
14 2774 it is impermissible to indemnify Levandowski for conduct that was felonious in nature.  
15 Levandowski engaged in felonious activity in connection with the events that led to the Arbitration  
16 Award. As determined in the Arbitration Award, Levandowski concealed competitive and disloyal  
17 conduct over a four-year period in order to procure a bonus and other compensation from Google  
18 under false pretenses. This conduct constitutes felony grand theft under California Penal Code  
19 Section 487, and it caused the Arbitration Panel to order Levandowski to disgorge the compensation  
20 obtained under false pretenses. Levandowski also pled guilty to the felony of Theft and Attempted  
21 Theft of Trade Secrets for stealing Google trade secrets related to self-driving car technology for use  
22 in competing with Google. The indictment recites a course of conduct that substantially overlaps  
23 with the conduct that formed the basis of the Arbitration Award. The indictment and guilty plea are  
24 attached as Exhibits 6 and 7. Moreover, Levandowski also concealed his felony theft of trade secrets  
25 in order to procure a bonus and other compensation from Google under false pretenses. Upon  
26 information and belief, Levandowski also engaged in felonious activity in accessing Google  
27 computers and data to wrongfully acquire compensation information regarding the employees he  
28 was soliciting to join Otto, in violation of California Penal Code Section 502. This conduct also

1 formed the basis of the Arbitration Award. The foregoing may not be an exhaustive list of  
 2 Levandowski's felonious activity. The Award of disgorgement was based upon Levandowski's  
 3 commission of wrongful and felonious conduct. Indemnification for the Award of disgorgement is  
 4 precluded as a matter of law and contract by both California Code Section 2773 and Section 2774.

5       4.       **Indemnification Agreement Is Null And Void Due To A Post-Signing Specified**  
 6 **Bad Act.** Levandowski's claims in Counts II and III fail, in whole or in part, because the Agreement  
 7 is void based upon Levandowski's commission of one or more Post-Signing Specified Bad Acts, as  
 8 provided in Section 2.1(a) of the Indemnification Agreement. Under Section 2.1(a) of the  
 9 Indemnification Agreement, the Agreement is null and void as to any employee who commits a  
 10 Post-Signing Specified Bad Act that was the subject of a Former Employer Claim. The definition of  
 11 "Post-Signing Specified Bad Act" includes any of the following if committed after April 11, 2016,  
 12 and before the closing: (a) "retaining, not returning . . . or possessing" numerous kinds of material,  
 13 including "machine readable storage media . . . of any Former Employer without the express written  
 14 consent of such Former Employer," (b) "retaining, storing, not returning . . . or possessing any  
 15 confidential or proprietary Software of any Former Employer without the express written consent of,  
 16 or any appropriate license from, such Former Employer," and (c) "retaining, storing, not returning . .  
 17 . or possessing any . . . electronic copy . . . file, data, or information of any Former Employer (in any  
 18 medium or form) without the express written consent of such Former Employer." The definition of  
 19 Post-Signing Specified Bad Acts also includes the solicitation of employees of a Former Employer  
 20 without that Former Employer's express written consent. And it includes knowingly permitting  
 21 others to commit a Post-Signing Specified Bad Act, as well as failing to disclose knowledge of the  
 22 commission of such acts.

23       Levandowski committed one or more Post-Signing Specified Bad Acts that were the subject  
 24 of Former Employer Claims, rendering the Agreement null and void as to him, and unenforceable by  
 25 him. Google, Waymo, and Tyto were all Former Employers of Levandowski. The amended  
 26 complaint filed in the Waymo litigation alleged that Levandowski was a Waymo manager and  
 27 provided services to Waymo. Levandowski also provided services to Tyto, so as to render Tyto a  
 28 Former Employer. Both the Google Arbitration and the Waymo litigation were Former Employer

1 Claims within the meaning of the Indemnification Agreement. Levandowski received  
2 indemnification of certain legal fees in conjunction with the Google Arbitration. Otto Trucking was  
3 an Indemnified Person and received indemnification for certain legal fees related to the Waymo  
4 litigation.

5 Levandowski committed Post-Signing Specified Bad Acts by, among other things, retaining  
6 access to Google confidential information and trade secrets after April 11, 2016, including through  
7 one or more online cloud storage accounts. In addition, upon information and belief, Levandowski  
8 knowingly permitted others to retain or access confidential documents, confidential information, and  
9 trade secrets belonging to Google or Waymo after April 11, 2016.

10 Levandowski also committed Post-Signing Specified Bad Acts by causing Ottomotto, and  
11 thus effectively Uber, to acquire Tyto and Tyto's intellectual property without disclosing his  
12 connection to Tyto. In May 2016, Levandowski arranged for Otto, and thus (upon closing of the Otto  
13 transaction) for Uber, to acquire Tyto's assets, including its confidential information and competitive  
14 LiDAR technology, as to which Google and Waymo had a claim, without disclosing his involvement  
15 in Tyto. Levandowski's fraudulent concealment of his own involvement in Tyto as well as his  
16 misconduct between April 11, 2016 and August 2016 caused Uber to acquire patents, trade secrets,  
17 and confidential information related to Tyto's LiDAR technology that were purportedly owned by  
18 Tyto but as to which, based upon Levandowski's breach of his duty of loyalty, Google and Waymo  
19 had a claim to equitable ownership.

20 Levandowski also committed Post-Signing Specified Bad Acts by retaining access to  
21 confidential information and trade secrets of another Former Employer after April 11, 2016: Tyto.  
22 Upon information and belief, Mr. Levandowski obtained and retained Tyto's confidential  
23 information without the express written consent of Tyto after April 11, 2016.

24 Additionally, upon information and belief, Levandowski also committed Post-Signing  
25 Specified Bad Acts by permitting others at Otto, after April 11, 2016, to solicit Google or Waymo  
26 employees to join Otto without the express written consent of Google or Waymo. Waymo's  
27 amended complaint in the Waymo litigation makes allegations at paragraphs 51-54 that relate to  
28 these Post-Signing Specified Bad Acts.



1 This is not an exhaustive account of Levandowski's Post-Signing Specified Bad Acts; Uber's  
2 investigation continues.

3 All of these Post-Signing Specified Bad Acts were the subject of Former Employer Claims,  
4 including certain claims asserted in the Waymo litigation and claims asserted in the Google  
5 Arbitration.

6 Uber seeks a Final Judgment adjudicating that Levandowski committed such Post-Signing  
7 Specified Bad Acts that were the subject of a Former Employer Claim and upon the entry of such a  
8 Final Judgment, the Indemnification Agreement should be deemed null and void with respect to  
9 Levandowski. For purposes of nullifying the Indemnification Agreement as to Levandowski, it is not  
10 necessary that he be a party to the Former Employer Claim; it suffices that his Post-Signing  
11 Specified Bad Act was the subject of such a claim.

12 5. **Excluded Claims.** Levandowski's claims in Counts II and III fail because the  
13 Arbitration Award is attributable, in whole or in part, to an Excluded Claim. Section 2.1(b)(ii) of the  
14 Indemnification Agreement provides that Uber shall have no obligation to indemnify Levandowski  
15 for claims arising from any Pre-Signing Bad Acts that "were not truthfully disclosed by  
16 [Levandowski] to the Outside Expert in response to relevant inquiries," or "were not contained or  
17 reflected in the due diligence materials provided by [Levandowski] to [Stroz]." The entire  
18 Arbitration Award is attributable to Pre-Signing Bad Acts that were not truthfully disclosed by  
19 Levandowski to the Outside Expert—including Levandowski's misconduct with respect to Tyto  
20 ("Tyto Misconduct"). Among other concealment, when asked about side projects while employed at  
21 Google, Levandowski "stressed that Google was aware, and approved of, *all of* his external side  
22 projects." Levandowski then proceeded to list nine side projects that he participated in while  
23 employed by Google, but omitted the Odin Wave/Tyto LiDAR project from the list and failed to  
24 disclose his involvement with and role in forming Odin Wave/Tyto. Levandowski concealed  
25 material and relevant information about Tyto to Stroz in the due diligence materials. Accordingly,  
26 the Google claim associated with the Tyto Misconduct is an Excluded Claim.

27 The Tyto Misconduct occurred throughout the entire period that the Chauffeur Bonus was  
28 vesting, and was the predominant reason that he was not entitled to receive the Related

1 Compensation and the Chauffeur Bonus. The Tyto Misconduct was also the predominant cause of  
 2 the Arbitration Award that ordered Levandowski to disgorge the Related Compensation and  
 3 Chauffeur Bonus. Additionally, Levandowski did not disclose truthfully to Uber the other Pre-  
 4 Signing Bad Acts that formed the basis of the Arbitration Award, including the full extent of the  
 5 Otto Misconduct, and his long-running course of conduct to procure compensation and a bonus  
 6 under false pretenses. Thus, the entire Arbitration Award is attributable to an Excluded Claim, and  
 7 Uber has no obligation to indemnify Levandowski for that Award. In the alternative, at least 75% of  
 8 the Arbitration Award is attributable to the Tyto Misconduct because at least 75% of the Chauffeur  
 9 Bonus vested during the period when *only* the Tyto Misconduct, and no other misconduct, was  
 10 occurring.

11       6.       **Material Breach Of Contract By Levandowski.** Levandowski's claims in Counts II  
 12 and III fail, in whole or in part, because Levandowski materially breached the Indemnification  
 13 Agreement, thereby relieving Uber from its obligation to perform thereunder, and entitling Uber to a  
 14 setoff and/or recoupment for the amounts paid or advanced to Levandowski for Expenses. Section  
 15 2.2(c) of the Indemnification Agreement provided that Uber had the right to direct and control the  
 16 defense of any Former Employer Claims (including Google's arbitration claims), required  
 17 Levandowski to cooperate in that defense, and required Levandowski to appear and give testimony  
 18 at Uber's reasonable request. Levandowski refused to cooperate, did not permit Uber to control the  
 19 defense, and refused to appear and testify at deposition despite Uber's reasonable request, instead  
 20 broadly invoking the Fifth Amendment in response to all questions posed. This had the effect of also  
 21 precluding any testimony by Levandowski at the arbitration hearing. Levandowski's failure to testify  
 22 denied Uber its primary bargained-for-consideration under that agreement. If Levandowski's  
 23 contention that his testimony would have made a difference is correct, then Levandowski materially  
 24 breached the terms of the Indemnification Agreement by reason of his refusal to testify. In light of  
 25 Levandowski's material breach of the Indemnification Agreement, Uber is not obligated to perform  
 26 under the Indemnification Agreement.

27       7.       **Fraudulent Inducement.** Levandowski's claims in Counts II, III, and IV-IX fail  
 28 because Levandowski fraudulently induced Uber to sign the Indemnification Agreement, Otto

1 Agreement, and Otto Trucking Agreement by, among other misrepresentations and omissions,  
2 concealing from Uber and Stroz his involvement in Tyto and misrepresenting to Uber that he had not  
3 taken confidential information or trade secrets from Google when, in fact, he had stolen at least one  
4 Google trade secret with the intention of using it at Uber. On April 11, 2016, Levandowski signed a  
5 written attestation stating that, “subject to any matters or information disclosed to Stroz, I have  
6 complied with my obligations under any [agreements or obligations to which I am subject with  
7 ‘Former Employer’].” In the same attestation, Levandowski also represented to Uber, “subject to any  
8 matters or information disclosed to Stroz, to my best knowledge I returned to Former Employer and  
9 have not retained Former Employer confidential or proprietary documents or information or property  
10 (including but not limited to hardware and software) after my employment with Former Employer.”  
11 Levandowski further attested, “(a) I have provided good faith, complete and truthful responses in all  
12 material respects to Stroz’s questions and (b) all of the information I have provided to Stroz is true  
13 and correct in all material respects.”

14 During his interview with Stroz on March 22 and 23, 2016, Levandowski “stressed that  
15 Google was aware, and approved of, *all of* his external side projects.” Levandowski then proceeded  
16 to list nine side projects that he participated in while employed by Google, but omitted the Odin  
17 Wave/Tyto LiDAR project from the list.

18 Levandowski also represented during the Stroz interview that the Google information that  
19 was found on his devices “was stored . . . in the normal course of his work at Google.” He made a  
20 number of statements and representations to the effect that the Google data and property in his  
21 possession were there unintentionally, including tools, Drobo 5D disks and company emails on his  
22 personal laptop, and he represented to Stroz that he did not intend to rely on any information or data  
23 from Google in his work for Uber. Levandowski thus represented during the Stroz interview that he  
24 had not intentionally downloaded, transferred, or accessed any Google information for the purpose  
25 of taking it and using it at Uber.

26 All of these representations were false. Google was not aware of and did not approve of  
27 Levandowski’s involvement in the Odin Wave/Tyto side project, and Levandowski did not comply  
28 with his agreements with or obligations to Google—as determined by the award in the Google

1 Arbitration. In fact, Levandowski's breach of his duties and obligations to Google was so pervasive  
2 that, as determined in the Arbitration Award, it nullified any benefit he may have conferred on  
3 Google during that time period, and warranted the disgorgement of all of the compensation that  
4 accrued to him during that time. Contrary to his attestations and his statements during the Stroz  
5 interviews, Levandowski did intentionally take Google confidential information with the intention of  
6 using it at Uber—as determined by his guilty plea to the crime of Theft and Attempted Theft of  
7 Trade Secrets. This is not an exhaustive list of Levandowski's misrepresentations and omissions;  
8 Uber's investigation continues.

9 Levandowski made these fraudulent representations and omissions with the intent of  
10 deceiving Uber and inducing it to enter into the Indemnification Agreement, Otto Agreement, and  
11 Otto Trucking Agreement. Uber reasonably and justifiably relied upon Levandowski's fraudulent  
12 misrepresentations in entering into the Indemnification Agreement, Otto Agreement, and Otto  
13 Trucking Agreement. Uber was harmed as a result of its justifiable reliance on Levandowski's fraud,  
14 including by incurring millions of dollars of expenses in defending the Waymo litigation and  
15 advancing Levandowski's defense costs in the Google Arbitration. Due to his fraudulent  
16 inducement, Levandowski is not entitled to enforce the Indemnification Agreement, Otto  
17 Agreement, and Otto Trucking Agreement.

18 8. **Unclean Hands.** Levandowski's claims in Counts II, III, and V-IX are barred by the  
19 doctrine of unclean hands. Levandowski engaged in wrongful conduct including but not limited to  
20 the following: fraudulently inducing Uber to indemnify Levandowski without disclosing that he had  
21 stolen one or more trade secrets from Google with the intent to use them at Uber; fraudulently  
22 misrepresenting to Uber that he had not intentionally taken any Google confidential information and  
23 did not intend to use any Google confidential information at Uber; fraudulently misrepresenting to  
24 Uber that he had not violated any of his agreements with or obligations to Google; fraudulently  
25 concealing from Uber his involvement in Odin Wave/Tyto; committing one or more felonies by  
26 stealing one or more trade secrets from Google and wrongfully accessing and taking compensation  
27 information from Google in order to solicit Google employees; and wrongfully obtaining a bonus of  
28 over \$100 million from Google under false pretenses. Because of this and other wrongful conduct,

Levandowski is barred by the doctrine of unclean hands from seeking any indemnification or damages of any kind, or seeking to hold Uber liable in any manner, in connection with any of the events at issue in this action, the Waymo litigation, the Google Arbitration, or the criminal action.

9. **Reimbursement For Amounts Paid Into Estate For Excluded Claims.** To the extent that Uber has paid or is otherwise required to pay into Levandowski's estate any indemnification amounts that are attributable to any Excluded Claim, Uber is entitled to reimbursement of those amounts. In addition, Uber is entitled to reimbursement for all defense costs already advanced that are allocable to any Excluded Claim.

10. **Setoff and Recoupment.** To the extent Uber is determined to have any indemnification obligation to Levandowski or to bear any other liability to Levandowski, which Uber expressly denies, Uber is entitled to an offset, reduction, or credit, and/or recoupment, for each of the following:

- a. Compensatory and consequential damages for Levandowski's fraudulent conduct including but not limited to fraudulent inducement. Levandowski fraudulently induced Uber to indemnify Levandowski. As a result of that agreement, Uber was required to defend against, and ultimately settle, litigation brought by Google's subsidiary Waymo, premised on Uber's alleged infringement of Google trade secrets and concealed involvement with Tyto and the development of its LiDAR technology. But for Levandowski's fraud, Uber would not have hired him and would not have been sued by Waymo, and relatedly would not have been required to provide hundreds of millions of dollars of value to settle the Waymo litigation. Accordingly, and as more fully set forth in Uber's counterclaims, Uber is entitled to compensatory and consequential damages in the amount of the defense costs and settlement value it provided in the Waymo litigation.
- b. Contribution from Levandowski for the value provided by Uber to settle the Waymo litigation based upon Levandowski's fault in causing Uber to incur potential liability to Waymo in connection with those claims.

- 1 c. Compensatory and/or rescissory damages in the amounts advanced to Levandowski to  
2 cover defense costs in the Google Arbitration. Levandowski materially breached the  
3 Indemnification Agreement by refusing to testify in the Google Arbitration.  
4 Levandowski also fraudulently induced Uber to enter into the Indemnification  
5 Agreement. Whether under a rescission or breach of contract theory, Uber is entitled  
6 to damages in the amount it paid under the Indemnification Agreement for  
7 Levandowski's defense of the Google Arbitration.
- 8 d. Contribution for at least 50% of the approximately \$9.5 million that Uber paid to  
9 indemnify Lior Ron for the portion of the Arbitration Award that was "joint and  
10 several" as between Levandowski and Ron.
- 11 e. The amount of the Arbitration Award that is allocable to Excluded Claims.
- 12 f. Reimbursement for all attorneys' fees and other costs allocable to Excluded Claims.

13 11.

14 [REDACTED]

15 [REDACTED]

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16 **18. Reservation of Additional Defenses Based Upon Full Text of Arbitration Award**

17 **And Full Arbitration Record.** As of the date of this Amended Answer, Uber still has not been  
18 provided a full, un-redacted copy of the Arbitration Award for which Levandowski seeks  
19 indemnification, or the record supporting that award. Uber has requested the production of the  
20 complete, un-redacted Award and the full arbitration record from both Levandowski and Intervenor  
21 Google. Uber reserves the right to assert additional defenses and affirmative defenses based upon the  
22 content of the un-redacted Arbitration Award and the arbitration record.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Uber requests that this Court enter judgment in its favor and against  
25 Levandowski on each Count of the Amended Adversary Complaint, and that the Court award Uber  
26 its costs, including attorneys' fees, for defending this action.  
27  
28

**COUNTERCLAIMS<sup>2</sup>**

Uber Technologies, Inc. (“Uber”), by and through its attorneys, alleges as follows in connection with its counterclaims against Anthony Levandowski:

**THE PARTIES**

1. Defendant Uber is a Delaware corporation with its principal place of business in San Francisco, California.

2. Plaintiff Anthony Levandowski is an individual who resides in Sausalito, California.

**JURISDICTION AND VENUE**

3. The Court has jurisdiction over Uber’s Counterclaims, pursuant to 28 U.S.C. § 1334(b), because the Counterclaims arise in and relate to the Chapter 11 bankruptcy case that Levandowski filed on March 4, 2020, in the United States Bankruptcy Court for the Northern District of California, Bankruptcy Petition No. 20-30242.

4. Uber’s Counterclaims seeking a declaration that its claims are non-dischargeable are denominated as core proceedings under 28 U.S.C. § 157(b)(2)(B) and (I). Pursuant to Local Bankruptcy Rule 7012-1, Uber consents to the entry of final orders or judgments by the Bankruptcy Court.

5. Venue is proper before the Court pursuant to 28 U.S.C. § 1409(a), and this Court’s July 29, 2020 Order Granting Stipulation to Withdraw Arbitration and Litigate Indemnity Dispute in Bankruptcy Court.

**FACTS**

6. Uber incorporates paragraphs 1–274 of its Answer and Affirmative Defenses 1-18 as though fully set forth herein.

7. Prior to January 27, 2016, Levandowski was an employee at Google, working on Google’s self-driving car project. While Levandowski was at Google, that project was operated as a

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<sup>2</sup> As of the date of this Answer, Uber still has not been provided a full, un-redacted copy of the Arbitration Award for which Levandowski seeks indemnification, or the record supporting that award. Uber has requested the production of the complete, un-redacted Award and the full arbitration record from both Levandowski and Intervenor Google. Uber reserves the rights to assert additional defenses and affirmative defenses based upon the content of the un-redacted Arbitration Award and the arbitration record.

1 division within Google called “Project Chauffeur.” In 2016, this project was referred to and  
2 established under the name of Waymo.

3 8. By February 22, 2016, Uber and Levandowski had entered into a non-binding term  
4 sheet for Uber’s acquisition of Ottomotto LLC (“Otto”). Prior to agreeing to the transaction, Uber  
5 and Otto, through their outside lawyers, hired a third-party forensic investigator, Stroz Friedberg  
6 (“Stroz”) to gather facts and documents to confirm and ensure that Levandowski and others did not  
7 bring any proprietary or confidential Google material to Otto, and would not bring any such  
8 information to Uber.

9 9. In March 2016, Uber engaged Stroz to conduct an independent investigation of Otto  
10 employees, including Levandowski. On March 22 and 23, 2016, three employees for Stroz  
11 conducted an interview of Levandowski.

12 10. During his interview with Stroz on March 22 and 23, 2016, Stroz asked Levandowski  
13 if he had been involved in any “side projects” during his employment at Google. Levandowski  
14 “stressed that Google was aware, and approved, of all of his external side projects.” Levandowski  
15 then proceeded to list nine side projects that he participated in while employed by Google, but did  
16 not disclose a side business called Tyto LiDAR (“Tyto”), which was a company that Levandowski  
17 created beginning in 2012, while working at Google, that was originally called Odin Wave.  
18 Levandowski had been the owner, investor, and adviser of Tyto and was the “control person” at  
19 Tyto.

20 11. Levandowski actively concealed from Uber that he had any role at Tyto.  
21 Levandowski arranged for Uber to acquire the assets of Tyto through a sale of those assets in May  
22 2016 to Otto, which Uber had agreed to acquire. Unknown to Uber, Google and Waymo had claims  
23 to Tyto’s LiDAR technology including because Levandowski was concurrently employed by Google  
24 and Waymo to develop the same type of LiDAR technology and because Levandowski concealed his  
25 involvement in Tyto from Google and Waymo. By arranging for Uber to acquire the Tyto assets and  
26 employ persons employed by Tyto, Levandowski fraudulently exposed Uber to substantial claims by  
27 Google and Waymo.  
28



12. Levandowski also represented during the Stroz interview that the Google information that was found on his devices and accounts “was stored . . . in the normal course of his work at Google.” He made a number of statements and representations to the effect that the Google data and property in his possession were there unintentionally, and he represented to Stroz that he did not intend to rely on any information or data from Google in his work for Uber. Levandowski represented during the Stroz interview that he had not intentionally downloaded, transferred, or accessed any Google information for the purpose of taking it and using it at Uber.

13. As part of Stroz’s due diligence, on April 11, 2016, Levandowski signed a written attestation stating that, “subject to any matters or information disclosed to Stroz, I have complied with my obligations under any [agreements or other obligations to which I am subject with ‘Former Employer’].” In the same attestation, Levandowski also represented to Uber, “subject to any matters or information disclosed to Stroz, to my best knowledge I returned to Former Employer and have not retained Former Employer confidential or proprietary documents or information or property (including but not limited to hardware and software) after my employment with Former Employer.” Levandowski further attested, “(a) I have provided good faith, complete and truthful responses in all material respects to Stroz’s questions and (b) all of the information I have provided to Stroz is true and correct in all material respects.”

14. Levandowski did not disclose to Stroz that since 2012, and while working at Google, he was the control person of Tyto and did not disclose Google’s potential claim to ownership of Tyto trade secrets and patents related to LiDAR technology.

15. Additionally, contrary to his attestations, his statements during the Stroz interviews and his multiple representations to Uber, Levandowski had intentionally and deliberately downloaded Google confidential information and trade secrets with the intention of using those trade secrets after leaving Google. Levandowski never disclosed this fact to Uber. To the contrary, Levandowski consistently assured Uber that he would not bring any confidential Google information to Uber.

16. Uber relied on Levandowski's assurances when it entered into an Indemnification Agreement with him on April 11, 2016.

1           17. Levandowski fraudulently induced Uber into executing the Indemnification  
2 Agreement. Levandowski made these fraudulent representations and omissions with the intent of  
3 deceiving Uber and inducing it to enter into the Indemnification Agreement. Uber reasonably and  
4 justifiably relied upon Levandowski's fraudulent misrepresentations in entering into the  
5 Indemnification Agreement.

6           18. At the time of the Agreement's execution, Levandowski expressly promised Uber in  
7 writing that he returned and did not retain any confidential Google information when he left Google,  
8 other than as expressly and fully disclosed to Stroz.

9           19. If Uber had known Levandowski had been involved with the Tyto business, had  
10 misappropriated Google trade secrets, had breached his fiduciary duties to Google, had committed  
11 felonious misconduct, or had lied to Stroz, Uber would not have executed the Indemnification  
12 Agreement in April 2016 and it would not have completed the Otto acquisition in August 2016.

13           20. Levandowski was the lead officer responsible for Uber's self-driving car business  
14 during his tenure at Uber, occupied a unique position of trust and confidence, and owed fiduciary  
15 duties to Uber.

16           21. Levandowski committed fraud on Uber while acting in his fiduciary capacity.

17           22. In October 2016, Google initiated two arbitration proceedings against Levandowski,  
18 which were subsequently consolidated. *Google LLC v. Anthony Scott Levandowski and Lior Ron*,  
19 JAMS Arbitration Case Reference No. 1100086069 (Consolidated) (the "Google Arbitration").  
20 Levandowski thereafter requested indemnity from Uber pursuant to the Indemnification Agreement.

21           23. Uber was harmed as a result of its justifiable reliance on Levandowski's fraud,  
22 including by incurring millions of dollars of expenses in defending subsequent litigation brought by  
23 Google against Uber and Levandowski and advancing Levandowski's defense costs in the Google  
24 Arbitration.

25           24. On August 15, 2019, a grand jury indicted Levandowski on 33 counts of theft and  
26 attempted theft of trade secrets. Levandowski was indicted pursuant to 18 U.S.C. § 1832(a)(1), (2),  
27 (3) & (4), Theft and Attempted Theft of Trade Secrets, and 18 U.S.C. §§ 1843 and 2323, Criminal  
28

1 Forfeiture. *United States of America v. Anthony Scott Levandowski*, Case No. 3:19-cr-00377-WHA  
2 (N.D. Cal. filed Aug. 15, 2019).

3 25. The indictment and each count incorporates a course of alleged misconduct that  
4 includes Levandowski's involvement with: (a) Project Chauffeur/Waymo; (b) Odin Wave/Tyto; (c)  
5 the formation of Otto; (d) the move to Uber; and (e) the downloading of trade secrets through at least  
6 January 2016.

7 26. The indictment was not publicly announced until August 27, 2019.

8 27. Three days after the indictment was made public, Uber notified Levandowski in a  
9 letter dated August 30, 2019, that the Indemnification Agreement was rescinded based on  
10 Levandowski's fraudulent inducement. Uber's August 30, 2019 letter also explained that even if the  
11 Indemnification Agreement were not rescinded, Levandowski would have no right to enforce it  
12 because (a) he had committed a "Post-Signing Specified Bad Act," which was defined in the  
13 Agreement to include "retaining, not returning . . . or possessing" confidential information from a  
14 former employer, and which rendered any indemnification obligation to Levandowski "null and  
15 void" under the Agreement's plain terms, and (b) Levandowski had materially breached the  
16 Agreement by refusing to testify and failing to cooperate in the Google Arbitration. Uber also  
17 explained that Google's claims related to Levandowski's Tyto conduct were Excluded Claims.

18 28. Uber reiterated its rescission of the Indemnification Agreement in letters dated  
19 September 11, 2019, September 27, 2019, December 31, 2019, and March 27, 2020.

20 29. On December 6, 2019, the Google Arbitration Panel issued a final award against  
21 Levandowski. The amount of the award solely against Levandowski was over \$174 million, not  
22 including amounts for which he was held jointly and severally liable with co-respondent Lior Ron.  
23 As discussed below, a primary component of that award was that Levandowski was obligated to  
24 disgorge to Google payments for a \$126,544,500.00 bonus tied to Google's Project Chauffeur  
25 program ("Chauffeur Bonus") and \$767,051.95 in salary and regular compensation ("Related  
26 Compensation"), to which he was not entitled, as well as to pay prejudgment interest on the same.

27 30. On March 4, 2020, the California Superior Court confirmed Google's Final Award  
28 against Levandowski, and issued judgment against Levandowski in the amount of \$179,047,998.64.

1 The primary component of the judgment was disgorgement of the Chauffeur Bonus and Related  
 2 Compensation, which were payments that Levandowski was not entitled to receive, together with  
 3 prejudgment interest on that amount.

4 31. On March 4, 2020, Levandowski filed a voluntary Chapter 11 bankruptcy petition in  
 5 the Bankruptcy Court and filed a “List of Creditors Who Have the Largest Unsecured Claims  
 6 Against You and Are Not Insiders,” naming Uber.

7 32. On March 19, 2020, federal prosecutors announced that Levandowski had agreed to  
 8 plead guilty to taking Google trade secret information with the intention of using it for his economic  
 9 benefit, including at Uber. Levandowski fraudulently concealed that he had taken trade secret  
 10 information when he negotiated the Indemnification Agreement.

11 33. On August 6, 2020, Levandowski was sentenced to one count of Theft and Attempted  
 12 Theft of Trade Secrets in violation of 18 U.S.C. § 1832(a)(1), (2), (3) & (4). *United States of*  
 13 *America v. Anthony Scott Levandowski*, Case No. 3:19-cr-00377-WHA (Dkt. 99, filed Aug. 6, 2020  
 14 “Judgment in a Criminal Case”).

15 34. At the time Uber agreed to indemnify Levandowski, it did not know about  
 16 Levandowski’s involvement and misconduct in forming the Tyto business, that he had stolen trade  
 17 secrets from and breached his fiduciary duties to Google, that he had lied to Stroz, or that he had  
 18 committed felonious conduct. Levandowski actively concealed those facts from Uber.

19 35. On July 6, 2020, Uber filed a Proof of Claim (Claim 8-1) in Bankruptcy Petition No.  
 20 20-30242.

#### 21 **A. The Google Arbitration Award**

22 36. As set forth in the Google Arbitration Award, “Google s[ought] an award that would  
 23 constitute a disgorgement of compensation that was paid to Respondents during the period of time  
 24 that they were disloyal.”

25 37. The Google Arbitration Panel ruled that “Google is entitled to an award that orders  
 26 Levandowski to disgorge and restore to Google the principal sum of \$127,311,551.95” in  
 27 compensation.  
 28

38. The Google Arbitration Panel also awarded Google “the sum of \$45,547,474.64 from Levandowski as pre-award interest on disgorgement damages.”

39. The Arbitration Award and subsequent judgment, for which Levandowski seeks indemnification, ordered Levandowski to disgorge payments wrongfully obtained from Google.

40. By law, Uber is not required or permitted to indemnify Levandowski for the disgorgement ordered in the Arbitration Award and judgment. To the extent that any term in the Indemnification Agreement could be read to indemnify Levandowski against disgorgement, it is void and unenforceable as contrary to public policy.

41. Section 2.4(b) of the Indemnification Agreement states that “there shall be deducted from such Expenses an amount equal to the amount of any proceeds actually received by any Indemnified Person from any third-party insurer or from any other third parties in connection with such Expenses.” The Chauffeur Bonus and Related Compensation were paid by Google, a third party, to Levandowski, an Indemnified Person. Any indemnifiable expenses must be reduced by the amount Levandowski received from third parties pursuant to Section 2.4(b) of the Indemnification Agreement.

#### **B. The Indemnification Agreement’s Post-Signing Specified Bad Acts Provision**

42. The Indemnification Agreement expressly provides that if an indemnified person, such as Levandowski, commits a “Post-Signing Specified Bad Act,” that will render the Agreement null and void and completely unenforceable as to that person.

43. Section 2.1(a) of the Indemnification Agreement provides that if Levandowski committed “a Post-Signing Specified Bad Act” after April 11, 2016, the date the Indemnification Agreement was executed, but before the closing of the Otto acquisition in August 2016, then Uber’s indemnification obligation to Levandowski would “become null and void and of no further force and effect and there shall be no liability on the part of” Uber or any of its affiliates to indemnify Levandowski.

44. The definition of “Post-Signing Specified Bad Act” includes, among other things, any of the following if committed after April 11, 2016, and before the closing: (a) “retaining, not

1 returning . . . or possessing” numerous kinds of material, including “machine readable storage media  
2 . . . of any Former Employer without the express written consent of such Former Employer,” (b)  
3 “retaining, storing, not returning . . . or possessing any confidential or proprietary Software of any  
4 Former Employer without the express written consent of, or any appropriate license from, such  
5 Former Employer,” and (c) “retaining, storing, not returning . . . or possessing any . . . electronic  
6 copy . . . file, data, or information of any Former Employer (in any medium or form) without the  
7 express written consent of such Former Employer.” It also includes solicitation of employees of a  
8 Former Employer without express written consent of the Former Employer.

9 45. Levandowski committed one or more Post-Signing Specified Bad Acts that were the  
10 subject of Former Employer Claims, rendering the Agreement null and void as to him, and  
11 unenforceable by him. Both Waymo and Tyto were each Former Employers of Levandowski.

12 46. The amended complaint in *Waymo LLC v. Uber Technologies, Inc., et al.*, Case No.  
13 3:17-cv-00939-WHA (N.D. Cal.) (“Waymo litigation”) alleged that Levandowski was a Waymo  
14 manager and provided services to Waymo. The Arbitration Panel found that Levandowski provided  
15 substantial services to Tyto, including technical and logistical support, and was the “control person”  
16 at Tyto. To the extent that Levandowski retained confidential documents, information, and trade  
17 secrets belonging to Google or Waymo after April 2016, and/or retained and/or accessed confidential  
18 documents, information, and trade secrets that were the subject of the Waymo litigation and that  
19 belonged to Tyto after April 2016 without Tyto’s express written agreement, or to the extent that he  
20 knowingly permitted others to do so, his doing so was a Post-Signing Specified Bad Act.

21 47. In May 2016, Levandowski arranged for Otto and thus Uber to acquire Tyto without  
22 disclosing his interest in it, and thereby caused Otto and Uber to acquire patents, trade secrets, and  
23 confidential information related to LiDAR technology that belonged to Tyto and as to which, based  
24 upon Levandowski’s breach of his duty of loyalty, Waymo or Google had a claim. Through this  
25 acquisition and his concealment of his role in Tyto, Levandowski solicited Tyto employees to  
26 become employees of Otto and thus employees of Uber, without ever disclosing to Uber that these  
27 employees had potential conflicting interests. Neither Tyto nor Waymo provided express written  
28 consent for Levandowski to engage in any of this conduct.



48. With respect to Tyto, Levandowski concealed from Uber his role in Tyto and did not secure Tyto's express written consent to his Post-Signing Specified Bad Acts. Waymo also did not expressly consent in writing to any of Levandowski's misconduct that was the subject of a Former Employer Claim, including claims asserted in the Waymo litigation. Upon information and belief, Levandowski committed other Post-Signing Specified Bad Acts that were the subject of Former Employer Claims, including the Google Arbitration.

49. As but one example, the Google Arbitration Award recounts that Levandowski solicited a Google employee, Laila Mattos, to leave Google after she received a bonus in May 2016 and on information and belief that solicitation and/or its concealment continued after April 11, 2016 and prior to August 2016.

**C. The Indemnification Agreement's Excluded Claims Provision**

50. Section 2.1(b)(ii) of the Indemnification Agreement provides that an Indemnified Claim shall not include, and that Uber shall not have "any obligation" to indemnify for, an "Excluded Claim." An Excluded Claim is any claim arising out of actions that "either (A) were not truthfully disclosed by [Levandowski] to [Stroz] in response to relevant inquiries in connection with the due diligence performed by [Stroz] or (B) were not contained or reflected in the due diligence materials provided by [Levandowski] to [Stroz]."

51. In March 2016, Uber engaged Stroz to conduct an independent investigation of Otto employees, including Levandowski. On March 22 and 23, 2016, three employees for Stroz conducted an interview of Levandowski.

52. Levandowski did not disclose his work on Tyto to Stroz. During those interviews, Stroz expressly asked Levandowski to identify all of the side projects he had worked on while employed at Google. Levandowski concealed from Uber that since 2012 he had been secretly operating a side business that competed with Google called Tyto, and that he had been the owner, investor, and adviser of the company.

53. Stroz's report to Uber lists all of the side projects that Levandowski disclosed to Stroz. The list does not include any reference to Tyto or to any entity involved in the development of LiDAR technology.

1           54. Levandowski failed to disclose to Stroz his involvement with Tyto. Uber was not  
2 aware that Levandowski had any involvement with Tyto or had worked on Tyto as a side project  
3 while at Google at the time the Indemnification Agreement was signed.

4           55. The Google Arbitration Panel found that Google's claims against Levandowski  
5 included misconduct attributed to Tyto and Otto.

6           56. The Google Arbitration Panel found that, during his employment at Google,  
7 Levandowski was secretly setting up a series of trusts and LLCs that resulted in him owning and  
8 controlling the company that was ultimately known as Tyto. The Google Arbitration Panel found  
9 that Levandowski breached his duty of loyalty to Google by setting up Tyto to develop technology  
10 that was competitive with Google's self-driving car efforts. Levandowski's misconduct related to  
11 Tyto began prior to October 2012 and continued through January 2016 when Levandowski left  
12 Google (the "Tyto Misconduct"). Thereafter, on information and belief, Levandowski committed  
13 additional Post-Signing Specified Bad Acts related to Tyto by accessing and transferring Tyto trade  
14 secrets, patents, and confidential information, as well as by soliciting Tyto employees, without  
15 Tyto's express consent.

16           57. The Google Arbitration Panel also found that Levandowski engaged in misconduct by  
17 setting up an entity that later became known as Otto. Levandowski's misconduct related to Otto  
18 began in August 2015 at the earliest, and continued until January 2016 when Levandowski left  
19 Google (the "Otto Misconduct").

20           58. Levandowski was part of the program known as Project Chauffeur while employed  
21 by Google. Levandowski participated in the Chauffeur Bonus Plan. He also received Related  
22 Compensation.

23           59. The Google Arbitration Panel entered an award against Levandowski requiring  
24 disgorgement of the compensation he earned during the period of disloyalty when he was engaged in  
25 conduct related to Tyto and Otto. The largest portion of the award was \$126,544,000.00 in  
26 Chauffeur Bonus payments and \$751,051.95 in Related Compensation, as well as prejudgment  
27 interest on those amounts of \$45,547,474.64.  
28

1           60. As part of the Chauffeur Bonus Plan, Levandowski's interest vested in 25% annual  
2 increments each year from October 2012 to October 2015. By the time Levandowski began his Otto  
3 Misconduct in 2015, he had already accrued a right to at least 75% of his Chauffeur Bonus.  
4 Levandowski's Tyto Misconduct continued from October 2012 through the termination of his  
5 employment.

6           61. The Tyto Misconduct occurred throughout the entire period during which  
7 Levandowski's Chauffeur Bonus was vesting and was the predominant cause of the Arbitration  
8 Award that ordered Levandowski to disgorge the Chauffeur Bonus and Related Compensation. Had  
9 Levandowski not been paid a bonus for the period of the Tyto Misconduct, he would not have  
10 received even a penny of the Chauffeur Bonus. Levandowski's concealment of the Tyto Misconduct  
11 is the primary cause of his receipt of the bonus and the primary reason for the disgorgement of that  
12 bonus and obligation to pay prejudgment interest on the same.

13           62. The Tyto Misconduct is an Excluded Claim. During the Stroz investigation and  
14 diligence, Levandowski failed to "truthfully disclose" the information about Tyto in response to  
15 relevant inquiries. He also failed to provide all the relevant information about Tyto in the materials  
16 he gave Stroz. Either one of these failures is sufficient to render all of the Google claims relating to  
17 the Tyto Misconduct "Excluded Claims."

18           63. The Otto Misconduct is also an Excluded Claim because Levandowski failed to  
19 disclose fully the extent or nature of that misconduct.

20           64. Levandowski's claims are barred because the predominant cause of the misconduct is  
21 based on Excluded Claims under the plain terms of the Indemnification Agreement.

22           65. In the alternative, at the least, over 75% of the Arbitration Award is attributable to the  
23 Tyto Misconduct because at least 75% of the Chauffeur Bonus vested during the period when *only*  
24 the Tyto Misconduct, and no other misconduct, was occurring. Therefore, at a minimum, 75% or  
25 more of the Chauffeur Bonus and Related Compensation (and prejudgment interest thereon) is  
26 allocable to Excluded Claims for which Uber has no obligation to indemnify Levandowski under any  
27 circumstances.  
28

**D. Levandowski's Refusal to Testify in the Google Arbitration was a Material Breach of the Indemnification Agreement**

66. The Indemnification Agreement provides that in the event that a claim is brought against Levandowski by a former employer, Uber "shall direct and control the defense or settlement of the Former Employer Claim."

67. Section 2.2(c) of the Indemnification Agreement further states:

The Indemnified Person(s) party to such Former Employer Claim (i) shall furnish Purchaser and its Representatives with such information as such Indemnified Person(s) may have with respect to such Former Employer Claim . . . , (ii) shall provide to Purchaser and its Representatives any documents or other materials . . . that may be necessary or useful to the defense of such Former Employer Claim . . . , (iii) shall make himself or herself available to Purchaser upon reasonable notice for interviews and factual investigations and to appear at Purchaser's reasonable request to give testimony (including deposition and trial testimony) with respect to the defense of such Former Employer Claim . . . and (iv) shall otherwise reasonably cooperate with and assist Purchaser and its Representatives in the defense of such Former Employer Claim.

68. Google sought Levandowski's deposition as part of the Google Arbitration.

69. In January 2018, Uber learned that Levandowski intended to invoke the Fifth Amendment at his deposition in the Google Arbitration rather than testify at the deposition that was scheduled for later that month.

70. On January 15, 2018, Uber's counsel emailed Levandowski's attorneys and stated: "It is Uber's view that it would be better for the defense of the claims in the Zing arbitration if Mr. Levandowski would testify to the issues raised in the arbitration, rather than invoke the 5th Amendment." Counsel for Uber also requested a meeting with Levandowski prior to his deposition.

71. On January 15, 2018, Levandowski's counsel rejected Uber's request that Levandowski testify regarding the issues in the arbitration, stating, "[A]fter extraordinary consideration and discussion, Anthony has decided he needs to continue to broadly assert his Fifth Amendment rights."

72. Contrary to the terms of the Indemnification Agreement providing that Uber be permitted to direct and control the litigation, Levandowski's counsel refused to meet with Uber's counsel prior to Levandowski's deposition.

73. On January 18, 2018, Levandowski sat for his deposition in the Google Arbitration and invoked the Fifth Amendment in response to each and every substantive question posed to him.

74. On April 2, 2018, counsel for Uber sent Levandowski's counsel a letter that explained, among other things, that Levandowski was in material breach of the Indemnification Agreement because he refused to testify at his deposition through an unjustifiably broad invocation of the Fifth Amendment, and requested that Levandowski reconsider his position in invoking the Fifth Amendment so he could testify at the arbitration hearing.

75. The April 2, 2018 letter from Uber's counsel also provided notice to Levandowski that Uber intended to exercise all of its rights to disclaim or avoid liability under the Indemnification Agreement based on (1) Levandowski's material breach by refusing to testify based on an unjustifiably broad invocation of the Fifth Amendment, (2) Levandowski's breach of the Indemnification Agreement by refusing to reasonably cooperate with the defense, and (3) the fact that certain of Google's claims were Excluded Claims.

76. On April 20, 2018, Levandowski submitted a proffer to the Google Arbitration Panel as to issues he would testify to at the arbitration hearing.

77. On April 24, 2018, the Google Arbitration Panel denied Levandowski's request to testify as to the subject matter that he did not testify to during fact discovery, which were the essential facts that Uber had requested that Levandowski testify to in the Google Arbitration.

78. Contrary to Uber's request under the Indemnification Agreement that Levandowski testify in the Google Arbitration, Levandowski did not testify at the hearing due entirely to Levandowski's refusal to testify during his deposition.

79. Levandowski failed to perform under and materially breached the Indemnification Agreement. In particular, Levandowski refused to testify in the Google Arbitration upon Uber's reasonable request, and failed to cooperate with Uber in the defense of the Google Arbitration claims, thereby denying Uber the entire consideration it bargained for under the Indemnification Agreement.

80. Uber's inability to cause Levandowski to testify evidences that at no point was Uber in control of Levandowski's defense in the Google Arbitration.

81. Uber never directed Levandowski's counsel to assert any arguments or defenses that they did not independently want to assert, or to refrain from asserting any arguments or defenses that they did want to assert. Uber was prohibited from participating in the dispute and denied access to and information about most of the arbitration hearing, and from presenting an argument on the allocation of Google's damages.

82. Uber was not permitted to submit evidence of the proper allocation of damages at the Google Arbitration hearing. The Google Arbitration Panel issued its decision without any reasoned consideration or arguments presented on the issue. Both Levandowski and Google had an incentive to reach a damages award that was incorrect as a matter of law and adverse to Uber.

83. During the Google Arbitration, Levandowski refused to cooperate, refused to testify, and refused to make it possible for rational settlement discussions to take place.

84. Levandowski's failure to comply with his obligations under the Indemnification Agreement deprived Uber of the benefit it would have derived from the Indemnification Agreement, namely, the right to control any litigation for which it was agreeing to provide indemnification. Uber cannot be adequately compensated for the breach. Levandowski's offer to testify at the hearing came too late and therefore Levandowski did not cure his breach.

85. Uber expects Levandowski to assert on appeal that his testimony, if allowed, would have changed the outcome of the arbitration. If it is determined that the outcome of the arbitration would have been different if Levandowski testified, then Levandowski's failure to testify was a material breach of the Indemnification Agreement, which excuses Uber's obligation to perform under the Indemnification Agreement, including payment of any Expenses in connection with the Arbitration Award.

**COUNT I**  
**Declaratory Judgment – No Indemnification**  
**Based On Disgorgement and Prejudgment Interest**

86. Uber incorporates all of the above paragraphs as though fully set forth herein.

87. The Arbitration Award and subsequent judgment, for which Levandowski seeks indemnification, ordered Levandowski to disgorge the Chauffer Bonus of \$126,544,500.00 and



1 Related Compensation of \$767,051.95 for a total disgorgement of \$127,311,551.95 in payments that  
2 Levandowski wrongfully obtained from Google.

3 88. As a matter of law, those payments never belonged to Levandowski. Levandowski's  
4 claims against Uber under the Indemnification Agreement related to the Chauffeur Bonus and  
5 Related Compensation, along with prejudgment interest on the same, fail because indemnification  
6 for disgorgement is impermissible in California as a matter of public policy.

7 89. Uber is not required or permitted to indemnify Levandowski for the disgorgement of  
8 the Chauffeur Bonus and Related Compensation, and prejudgment interest on the same, as ordered in  
9 the Arbitration Award and judgment. To the extent that any term in the Indemnification Agreement  
10 could be read to indemnify Levandowski against disgorgement, it is void and unenforceable as  
11 contrary to public policy.

12 90. The amounts awarded for prejudgment interest related to the award of disgorgement  
13 is likewise not indemnifiable as a matter of law and policy.

14 91. Independent of the prohibition on indemnification for disgorgement, any  
15 indemnifiable expenses must be reduced by the amount Levandowski received from third parties  
16 pursuant to Section 2.4(b) of the Indemnification Agreement.

17 92. The Chauffeur Bonus and Related Compensation were paid by Google, a third party,  
18 to Levandowski, an Indemnified Person.

19 93. Uber is not obligated to pay any amount that is attributable to the Chauffeur Bonus  
20 and Related Compensation under Section 2.4(b) of the Indemnification Agreement, including any  
21 prejudgment interest or post-judgment interest on that award.

22 94. As a result of the acts described herein, a live controversy exists as to (a) whether  
23 Levandowski is entitled to indemnification for the disgorgement of the Chauffeur Bonus and Related  
24 Compensation as well as prejudgment interest related to this disgorgement; and (b) whether  
25 Levandowski is entitled to indemnification for his obligation to return or repay to Google payments  
26 that he received from Google, a third party.

27 95. These issues are ripe for determination and require a declaration that Uber has no  
28 duty or obligation to indemnify Levandowski for the disgorgement of the Chauffeur Bonus and

1 Related Compensation, for the obligation to repay any monies paid to him by Google and any  
2 prejudgment interest related to the same.

3 96. Uber therefore seeks a declaration that Uber has no duty or obligation to indemnify  
4 Levandowski for the disgorgement of the Chauffeur Bonus and Related Compensation, and for the  
5 obligation to repay any monies paid to him by Google and any prejudgment interest related to the  
6 same.

7 **COUNT II**  
8 **Declaratory Judgment - Levandowski's Claims Are Barred**  
9 **By California Civil Code § 2774**

10 97. Uber incorporates all of the above paragraphs as though fully set forth herein.

11 98. California Civil Code § 2774 states: “[a]n agreement to indemnify a person against an  
12 act already done, is valid, even though the act was known to be wrongful, unless it was a felony.”  
13 Cal. Civil Code § 2774 precludes indemnification for losses and damages caused by felonious  
14 conduct, without regard to whether the party seeking indemnification is convicted for that crime or  
15 not.

16 99. Levandowski engaged in felonious acts and those acts were the basis for the  
17 Arbitration Award. Any indemnification of Levandowski for the Arbitration Award or any resulting  
18 judgment is precluded by Cal. Civil Code § 2774.

19 100. Levandowski was charged with 33 felony counts of theft and attempted theft of trade  
20 secrets. *See* 18 U.S.C. §§ 1832(a)(1), (2), (3), & (4). The indictment and each count incorporates a  
21 course of alleged misconduct that included Levandowski’s involvement with: (a) Project Chauffeur;  
22 (b) Tyto; (c) the formation of Otto; (d) the move to Uber; and (e) the downloading of trade secrets  
23 through at least January 2016. The indictment reflects a course of felonious conduct that  
24 substantially overlaps with the conduct that formed the basis of the Arbitration Award.

25 101. Levandowski pled guilty to the felony of Theft and Attempted Theft of Trade Secrets  
26 for stealing Google trade secrets related to self-driving car technology for use in competing with  
27 Google.  
28

102. Levandowski also engaged in felonious activity in accessing Google computers and data to wrongfully acquire compensation and benefits information regarding the employees he was soliciting to come to Otto, in violation of California Penal Code Section 502. The Google Arbitration Panel found that Levandowski breached his duties to Google by improperly accessing Google employees' salary and performance information and then using that information to attempt to solicit those employees to Otto. This conduct was not only a breach of Levandowski's duties to Google, but it was felonious conduct within the meaning of Cal. Civil Code § 2774 and Cal. Penal Code § 502(c)(1) and (2).

103. Uber is not required or permitted to indemnify Levandowski for any Expense resulting from or associated with his felonious activity.

104. As a result of the acts described herein, a live controversy exists as to whether Levandowski is entitled to indemnification for the Arbitration Award and subsequent judgment, including any part of the Award or subsequent judgment that is based upon felonious conduct.

105. These issues are ripe for determination and require a declaration that Uber has no duty or obligation to indemnify Levandowski for the Arbitration Award and Judgment, including any part of the Award or subsequent judgment that is based upon felonious conduct.

106. Uber therefore seeks a declaration that Uber has no duty or obligation to indemnify Levandowski for the Arbitration Award and subsequent judgment, including any part of the Award or Judgment that is based upon felonious conduct.

### COUNT III

#### **Declaratory Judgment - No Indemnification Due To Post-Signing Specified Bad Acts**

107. Uber incorporates all of the above paragraphs as though fully set forth herein.

108. The Indemnification Agreement expressly provides that if an indemnified person, such as Levandowski, commits a "Post-Signing Specified Bad Act," that will render the Agreement null and void and completely unenforceable as to that person.

109. Levandowski committed one or more Post-Signing Specified Bad Acts, rendering the Agreement null and void as to him, and unenforceable by him.

110. The definition of Post-Signing Specified Bad Acts includes retaining or using any confidential Google information after the execution of the Indemnification Agreement, as well as solicitation of employees. The expansive definition is set forth more fully in Exhibit A to the Indemnification Agreement and provides that an “Act” may include “knowingly permit[ing] someone else to take” an action.

111. Levandowski committed one or more Post-Signing Specified Bad Acts that were the subject of Former Employer Claims, rendering the Indemnification Agreement null and void as to him, and unenforceable by him. Both Waymo and Tyto were each Former Employers of Levandowski. The amended complaint filed in the Waymo litigation alleged that Levandowski was a Waymo manager and provided services to Waymo. The Arbitration Panel found that Levandowski provided substantial services to Tyto, including technical and logistical support, and was the “control person” at Tyto. Both the Google Arbitration and the Waymo litigation were Former Employer Claims within the meaning of the Indemnification Agreement. Levandowski received indemnification of certain legal fees in conjunction with the Google Arbitration. Otto Trucking LLC was an Indemnified Person and received indemnification for certain legal fees related to the Waymo litigation.

112. Levandowski retained and/or accessed confidential documents, confidential information, patents, and trade secrets belonging to Google, Waymo, and Tyto after April 2016. In May 2016, Levandowski arranged for Otto, and thus upon closing for Uber, to acquire Tyto’s assets, including its confidential information and competitive LiDAR technology, as to which Google or Waymo had a claim, without disclosing his involvement in Tyto.

113. Levandowski’s fraudulent concealment of his own involvement in Tyto, as well as his misconduct between April 11, 2016 and August 2016, caused Uber to acquire patents, trade secrets, and confidential information related to LiDAR technology that were purportedly owned by Tyto but in which, based upon Levandowski’s breach of his duty of loyalty, Google or Waymo had a claim.

114. Through this Tyto acquisition and Levandowski’s concealment of his role in Tyto after April 11, 2016, Levandowski also solicited Tyto employees to become employees of Otto and thus employees of Uber, without ever disclosing to Uber that these employees had potential

1 conflicting interests. Neither Tyto nor Waymo provided express written consent for Levandowski to  
 2 engage in any of this misconduct.

3 115. With respect to Tyto, Levandowski concealed from Uber his role in Tyto and thus  
 4 could not secure Tyto's express written consent to his Post-Signing Specified Bad Acts. Waymo also  
 5 did not expressly consent in writing to any of these. Levandowski's misconduct was the subject of  
 6 multiple Former Employer Claims, including the claims asserted in the Waymo litigation and claims  
 7 asserted in the Google Arbitration. The acquisition of Tyto's LiDAR technology, which was  
 8 arranged for in May 2016 by Levandowski, was at the heart of the Waymo litigation.

9 116. Additionally, as but one example, the Google Arbitration Award recounts that  
 10 Levandowski solicited a Google employee, Laila Mattos, to leave Google after she received a bonus  
 11 in May 2016 and on information and belief that solicitation and/or its concealment continued after  
 12 April 11, 2016 and prior to August 2016.

13 117. Uber seeks a final judgment adjudicating that Levandowski committed such Post-  
 14 Signing Specified Bad Acts that were the subject of a Former Employer Claim and upon the entry of  
 15 such a Final Judgment, the Indemnification Agreement should be deemed null and void with respect  
 16 to Levandowski. For purposes of nullifying the Indemnification Agreement as to Levandowski, it is  
 17 not necessary that he be a party to the Former Employer Claim; it suffices that his Post-Signing  
 18 Specified Bad Act was the subject of such a claim.

19 118. As a result of the acts described herein, a live controversy exists as to whether the  
 20 Indemnification Agreement is null and void due to Levandowski's commission of one or more Post-  
 21 Signing Specified Bad Acts.

22 119. This controversy is ripe for determination and requires a declaration that the  
 23 Indemnification Agreement is null and void due to Levandowski's commission of one or more Post-  
 24 Signing Specified Bad Acts.

25 120. Uber therefore seeks a declaration that the Indemnification Agreement is null and  
 26 void due to Levandowski's commission of one or more Post-Signing Specified Bad Acts.

27 **COUNT IV**  
 28 **Declaratory Judgment - No Indemnification And/Or Setoff Due To Excluded Claims**

121. Uber incorporates all of the above paragraphs as though fully set forth herein.

122. During the Stroz investigation and diligence, Levandowski failed to “truthfully disclose” the information about Tyto in response to relevant inquiries. He also failed to provide all the relevant information about Tyto in the materials he gave Stroz. Either one of these failures is sufficient to render all of the Google claims relating to the Tyto Misconduct “Excluded Claims.”

123. Levandowski’s claims are barred because the predominant cause of the Arbitration Award was misconduct that constitutes one or more Excluded Claims under the plain terms of the Indemnification Agreement.

124. The Tyto Misconduct occurred throughout the entire period during which Levandowski’s Chauffeur Bonus was vesting and was the predominant cause of the Arbitration Award that ordered Levandowski to disgorge the Chauffeur Bonus and Related Compensation.

125. Levandowski also failed to disclose the full scope of the misconduct he committed in relation to Otto; thus, any undisclosed misconduct related to Otto also constitutes an Excluded Claim. To the extent that the Arbitration Award was based on the Otto Misconduct, Levandowski’s claims are barred because that conduct also constituted an Excluded Claim.

126. In the alternative, at the least, over 75% of the Arbitration Award is attributable to the Tyto Misconduct because at least 75% of the Chauffeur Bonus vested during the period when *only* the Tyto Misconduct was occurring.

127. As a result of the acts described herein, a live controversy exists as to whether the Arbitration Award and any judgment based on it is an Excluded Claim.

128. This controversy is ripe for determination and requires a declaration that the Arbitration Award and any judgment based on it is an Excluded Claim.

129. Uber therefore seeks a declaration that the Arbitration Award, and any judgment based on it, and/or any portion of that Award and judgment related to the Tyto Misconduct are Excluded Claims and not subject to indemnification. In the alternative, Uber seeks a declaration that any indemnification to which Levandowski may otherwise be entitled must be subject to setoff and/or recoupment in the amount of any award or judgment attributable to an Excluded Claim.

## COUNT V



**Breach of Indemnification Agreement**

130. Uber incorporates all of the above paragraphs as though fully set forth herein.

131. Contrary to Uber's request under the Indemnification Agreement that Levandowski testify in the Google Arbitration, Levandowski did not testify at his deposition or the arbitration hearing.

132. Levandowski materially breached the Indemnification Agreement by failing to testify at his deposition and the Google Arbitration hearing, and by his other failures to cooperate with the defense. Levandowski failed to perform his obligations under the Indemnification Agreement by failing to comply with Uber's request that he provide relevant testimony at his deposition and at the Google Arbitration hearing and by impeding Uber's ability to have access to the information necessary for Uber to effectively oversee and direct the defense of the dispute. By broadly invoking the Fifth Amendment and declining to meet with Uber's counsel, Levandowski materially breached Sections 2.2(b) and 2.2(c) of the Indemnification Agreement and denied Uber its bargained-for consideration.

133. Levandowski is expected to assert that the outcome of the Google Arbitration would have been different had he testified at the arbitration hearing.

134. Levandowski admitted through his last-ditch effort to reverse course in order to try to testify in the Google Arbitration that he believes his testimony and cooperation would have changed the outcome of the arbitration against Google.

135. If Levandowski's contention that his testimony would have made a difference is correct, then he has materially breached the terms of the Indemnification Agreement so as to excuse Uber's performance of the Indemnification Agreement. At minimum, Levandowski's breach injured Uber by depriving it of the benefits for which it bargained in the Indemnification Agreement.

136. Uber is entitled to a declaration that Levandowski's breach of the Indemnification Agreement excuses any obligation that Uber may otherwise have to perform under the Indemnification Agreement. Uber is also entitled to restitution of benefits conferred on Levandowski by Uber under the Indemnification Agreement entered into between Uber and Levandowski on April 11, 2016, based upon Levandowski's breach of contract.

**COUNT VI**  
**Damages Based On Fraud And Fraudulent Inducement**  
**And For A Declaration That Such Damages Are Non-Dischargeable**  
**Pursuant To 11 U.S.C. § 523(a)(2)(A), § 523(a)(4), Or § 523(a)(6)**

137. Uber incorporates all of the above paragraphs as though fully set forth herein.

138. Due to Levandowski's fraudulent inducement, Uber entered into the Indemnification Agreement with Levandowski on April 11, 2016.

139. In March 2016, Uber engaged Stroz to conduct an independent investigation of Levandowski prior to the signing of the Indemnification Agreement.

140. During his interview with Stroz on March 22 and 23, 2016, Levandowski "stressed that Google was aware, and approved, of all of his external side projects." Levandowski then proceeded to list nine side projects that he participated in while employed by Google, but omitted Tyto from the list.

141. Levandowski concealed from Stroz and Uber that since 2012 he had been secretly operating a business that competed with Google called Tyto. Levandowski had been the owner, investor, and adviser of Tyto and, as the Arbitration Panel found, he was secretly the control person of Tyto. Levandowski arranged for Otto to purchase Tyto, so as to transfer Tyto's trade secrets and confidential information related to the LiDAR technology to Uber, without Uber ever knowing that Levandowski was involved with Tyto and without Uber ever knowing that Levandowski had used Tyto as a means for secretly establishing a competing business with Google and that Google would have a claim to the very LiDAR technology that Uber was acquiring.

142. Levandowski also represented during the Stroz interview that he had not intentionally downloaded, transferred, or accessed any Google information for the purpose of taking it and using it at Uber.

143. Levandowski represented to Stroz during the interviews that the Google information that was found on his devices "was stored . . . in the normal course of his work at Google." He made a number of statements and representations to the effect that the Google data and property in his possession was there unintentionally. Levandowski also represented to Stroz that he did not intend to rely on any information or data from Google in his work for Uber.

1 144. At the time of the Agreement's execution, Levandowski expressly promised Uber in  
2 writing that he returned and did not retain any confidential Google information when he left Google.

3 145. On April 11, 2016, Levandowski signed a written attestation stating that, "subject to  
4 any matters or information disclosed to Stroz, I have complied with my obligations under any  
5 [agreements or obligations to which I am subject with 'Former Employer']."

6 146. In the same attestation, Levandowski also represented to Uber, "subject to any  
7 matters or information disclosed to Stroz, to my best knowledge I returned to Former Employer and  
8 have not retained Former Employer confidential or proprietary documents or information or property  
9 (including but not limited to hardware and software) after my employment with Former Employer."  
10 Levandowski further attested, "(a) I have provided good faith, complete and truthful responses in all  
11 material respects to Stroz's questions and (b) all of the information I have provided to Stroz is true  
12 and correct in all material respects."

13 147. Contrary to his attestations, his statements during the Stroz interviews, and his  
14 multiple representations to Uber, Levandowski intentionally and deliberately downloaded Google  
15 confidential information and trade secrets with the intention of using those trade secrets while at  
16 Uber. Levandowski never disclosed this fact to Uber. To the contrary, he expressly promised not to  
17 do anything of the kind, and to take every precaution to ensure that no Google trade secrets would  
18 come to Uber. Levandowski consistently assured Uber that it would not bring any confidential  
19 Google information to Uber.

20 148. Levandowski made these fraudulent representations and omissions with the intent of  
21 deceiving Uber and inducing it to enter into the Indemnification Agreement. Uber reasonably and  
22 justifiably relied upon Levandowski's fraudulent misrepresentations in entering into the  
23 Indemnification Agreement.

24 149. If Uber had known Levandowski's statements were fraudulent representations, Uber  
25 would not have executed the Indemnification Agreement in April 2016.

26 150. After learning of Levandowski's fraud, Uber properly rescinded the Indemnification  
27 Agreement.  
28

151. Uber is entitled to restitution of benefits conferred on Levandowski by Uber under the Indemnification Agreement entered into between Uber and Levandowski on April 11, 2016, based upon Uber's proper rescission of that agreement as a result of Levandowski's fraud.

152. Levandowski fraudulently concealed from Uber that Levandowski had committed Tyto Misconduct, had engaged in felonious misconduct, had wrongfully taken and concealed his retention of Google trade secrets and confidential documents, had wrongfully taken and retained trade secrets in which Waymo or Google had a claim, and had committed Post-Signing Specified Bad Acts.

153. If Uber had known that Levandowski had committed the Tyto Misconduct, had engaged in felonious misconduct, had wrongfully taken and concealed trade secrets in which Waymo or Google had a claim, including through his secret control of Tyto, and/or known that he had committed Post-Signing Specified Bad Acts, it would not have consummated the Otto acquisition.

154. But for Levandowski's fraud, Uber would not have acquired any LiDAR technology in which Google or Waymo had a claim, and would not have been subject to the claims asserted against it by Waymo. Levandowski's fraud, including his concealment of his involvement as the control person in Tyto, was a substantial factor in the Google Arbitration Award and also a substantial factor in causing Uber to provide Waymo consideration valued at approximately \$245 million to resolve claims asserted in the Waymo litigation. Uber is entitled to contribution from Levandowski for all losses it incurred in connection with the Google Arbitration and the Waymo claims.

155. The sole basis for Uber's inclusion in the Waymo litigation was Uber's acquisition of Otto and agreement to acquire Otto Trucking LLC. Uber would not have closed that transaction or entered into the Indemnification Agreement had it known of Levandowski's fraudulent and other wrongful conduct, and Waymo would not have sued Uber but for that misconduct. The Waymo litigation was a direct consequence of Levandowski's fraudulent conduct.

156. Uber is entitled to consequential damages caused by Levandowski's fraud committed upon Uber, including but not limited to the value of the consideration that Uber has been required to

1 provide Waymo in the Waymo litigation to resolve claims arising out of and caused by  
 2 Levandowski's fraud, including claims for violations of the Trade Secret Act, violations of the  
 3 California Uniform Trade Secret Act, patent infringements, and violation of the California Business  
 4 and Professional Code.

5 157. Uber is entitled to setoff and/or recoup any amounts Levandowski owes to Uber  
 6 against any amounts Uber is found to owe to Levandowski based upon Levandowski's fraud.

7 158. Levandowski's actual fraud and fraudulent misrepresentations resulted in Uber's  
 8 claims for recovery of benefits conferred upon Levandowski under the Indemnification Agreement  
 9 and for all damages incurred as a result of Levandowski's fraud, including recovery of the value of  
 10 the consideration that Uber provided Waymo in connection with the Waymo litigation. The Court  
 11 should therefore declare that all of Uber's claims for damages are non-dischargeable pursuant to 11  
 12 U.S.C. § 523(a)(2)(A).

13 159. Levandowski was the lead officer responsible for Uber's self-driving car business  
 14 during his tenure at Uber, occupied a unique position of trust and confidence, owed fiduciary duties  
 15 to Uber, and committed a fraud on Uber while acting in his fiduciary capacity, making Uber's claims  
 16 non-dischargeable pursuant to 11 U.S.C. § 523(a)(4).

17 160. Levandowski's actual fraud and fraudulent misrepresentations were wrongful acts,  
 18 which Levandowski committed intentionally and which necessarily caused Uber injury, and were  
 19 done without just cause or excuse. The Court should therefore also declare that all of Uber's claims  
 20 for damages are non-dischargeable pursuant to 11 U.S.C. § 523(a)(6).

## 21 COUNT VII

### 22 **Contribution Of The Value Of The Consideration Provided To Settle The Waymo Litigation** 23 **And For A Declaration That Such Right Of Contribution Is Non-Dischargeable Pursuant To** **11 U.S.C. § 523(a)(2)(A), § 523(a)(4), Or § 523(a)(6)**

24 161. Uber incorporates all of the above paragraphs as though fully set forth herein.

25 162. Levandowski fraudulently concealed from Uber that Levandowski had committed  
 26 Tyto Misconduct, had engaged in felonious misconduct, had wrongfully taken and concealed his  
 27 retention of Google trade secrets and confidential documents, had wrongfully taken and retained  
 28

1 trade secrets in which Waymo or Google had a claim, and had committed Post-Signing Specified  
2 Bad Acts.

3 163. If Uber had known that Levandowski had committed the Tyto Misconduct, had  
4 engaged in felonious misconduct, had wrongfully taken and concealed trade secrets in which  
5 Waymo or Google had a claim, and/or known that he had committed Post-Signing Specified Bad  
6 Acts, it would not have consummated the Otto acquisition.

7 164. But for Levandowski's fraud, Uber would not have been subject to the claims  
8 asserted against it by Waymo and it would not have been necessary for Uber to provide  
9 consideration valued at approximately \$245 million to resolve those claims. Uber is entitled to  
10 contribution from Levandowski for all losses it incurred in connection with the Waymo claims.

11 165. Levandowski is jointly and severally liable to Waymo for the losses that Waymo  
12 claimed in its claims against Uber.

13 166. Uber is entitled to contribution from Levandowski in the amount equal to the  
14 consideration it provided Waymo to settle the Waymo litigation.

15 167. Uber is entitled to setoff and/or recoup any amounts Levandowski owes to Uber for  
16 contribution against any amounts Uber is found to owe to Levandowski.

17 168. Levandowski's actual fraud and fraudulent misrepresentations resulted in Uber's  
18 debts for recovery of contribution damages. The Court should therefore declare that all of Uber's  
19 claims for contribution are non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

20 169. Levandowski was the lead officer responsible for Uber's self-driving car business  
21 during his tenure at Uber, occupied a unique position of trust and confidence, owed fiduciary duties  
22 to Uber, and committed a fraud on Uber while acting in his fiduciary capacity, making Uber's claims  
23 non-dischargeable pursuant to 11 U.S.C. § 523(a)(4).

24 170. Levandowski's actual fraud and fraudulent misrepresentations which give rise to  
25 Uber's claims for contribution were wrongful acts, which Levandowski committed intentionally and  
26 which necessarily caused Uber injury, and were done without just cause or excuse. The Court should  
27 therefore also declare that all of Uber's claims for contribution are non-dischargeable pursuant to 11  
28 U.S.C. § 523(a)(6).



**COUNT VIII**  
**Declaratory Judgment For Rescission Based On Fraudulent Inducement**

171. Uber incorporates all of the above paragraphs as though fully set forth herein.

172. Due to Levandowski's fraudulent inducement, Uber entered into the Indemnification Agreement with Levandowski on April 11, 2016.

173. In March 2016, Uber engaged Stroz to conduct an independent investigation of Levandowski prior to the signing of the Indemnification Agreement.

174. During his interview with Stroz on March 22 and 23, 2016, Levandowski "stressed that Google was aware, and approved, of all of his external side projects." Levandowski then proceeded to list nine side projects that he participated in while employed by Google, but omitted the Tyto project from the list.

175. Levandowski fraudulently concealed from Stroz and Uber that since 2012 he had been secretly operating a side business that competed with Google called Tyto, which was a company that Levandowski created beginning in 2012. Levandowski had been the owner, investor, and adviser of Tyto.

176. Levandowski fraudulently represented during the Stroz interview that he had not intentionally downloaded, transferred, or accessed any Google information for the purpose of taking it and using it at Uber.

177. Levandowski fraudulently represented during the Stroz interviews that the Google information that was found on his devices "was stored . . . in the normal course of his work at Google." He made a number of statements and representations to the effect that the Google data and property in his possession was there unintentionally, and he represented to Stroz that he did not intend to rely on any information or data from Google in his work for Uber.

178. At the time of the Indemnification Agreement's execution, Levandowski expressly promised Uber in writing that he returned and did not retain any confidential Google information when he left Google.

1           179. On April 11, 2016, Levandowski signed a written attestation stating that, “subject to  
2 any matters or information disclosed to Stroz, I have complied with my obligations under any  
3 [agreements or obligations to which I am subject with ‘Former Employer’].”

4           180. In the same attestation, Levandowski also represented to Uber, “subject to any  
5 matters or information disclosed to Stroz, to my best knowledge I returned to Former Employer and  
6 have not retained Former Employer confidential or proprietary documents or information or property  
7 (including but not limited to hardware and software) after my employment with Former Employer.”  
8 Levandowski further attested, “(a) I have provided good faith, complete and truthful responses in all  
9 material respects to Stroz’s questions and (b) all of the information I have provided to Stroz is true  
10 and correct in all material respects.”

11           181. Contrary to his attestations, his statements during the Stroz interviews, and his  
12 multiple representations to Uber, Levandowski intentionally and deliberately downloaded Google  
13 confidential information and trade secrets with the intention of using those trade secrets while at  
14 Uber. Levandowski never disclosed this fact to Uber. To the contrary, he expressly promised not to  
15 do anything of the kind, and to take every precaution to ensure that no Google trade secrets would  
16 come to Uber. Levandowski consistently assured Uber that it would not bring any confidential  
17 Google information to Uber.

18           182. Levandowski made these fraudulent representations and omissions with the intent of  
19 deceiving Uber and inducing it to enter into the Indemnification Agreement. Uber reasonably and  
20 justifiably relied upon Levandowski’s fraudulent misrepresentations in entering into the  
21 Indemnification Agreement.

22           183. If Uber had known Levandowski’s statements were fraudulent representations, Uber  
23 would not have executed the Indemnification Agreement in April 2016.

24           184. After learning of Levandowski’s fraud, Uber properly rescinded the Indemnification  
25 Agreement.

26           185. As a result of the acts described herein, a live controversy exists as to whether Uber  
27 has effectively rescinded the Indemnification Agreement.  
28

186. The issue of whether Uber has effectively rescinded the Indemnification Agreement is ripe for determination.

187. Uber therefore seeks a declaration that it has effectively rescinded the Indemnification Agreement.

**COUNT IX**  
**Contribution Of The Amounts Paid For Lior Ron And**  
**For A Declaration That Such Amounts Are Non-Dischargeable**  
**Pursuant To 11 U.S.C. § 523(a)(2)(A), § 523(a)(4), Or § 523(a)(6)**

188. Uber incorporates all of the above paragraphs as though fully set forth herein.

189. The Corrected Final Award and subsequent judgment awarded Google \$9,573,096.60 from Lior Ron, individually and jointly and severally with Levandowski.

190. On February 5, 2020, Uber paid Google, on Ron's behalf, \$9,453,135.87 to settle this portion of the award, as well as the much smaller amount awarded solely against Ron.

191. Ron assigned to Uber his right to seek contribution from Levandowski in the amount proportionate to Levandowski's comparative fault. Levandowski is solely or primarily at fault with respect to that award.

192. Uber is entitled to contribution from Levandowski in the amount of the joint and several portion of the Google Award that Uber paid on behalf of Lior Ron.

193. Uber is entitled to setoff and/or recoup any amounts Levandowski owes to Uber for contribution against any amounts Uber is found to owe to Levandowski.

194. Levandowski's actual fraud and fraudulent misrepresentations resulted in Uber's debts for recovery of contribution damages. The Court should therefore declare that all of Uber's claims for contribution are non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

195. Levandowski was the lead officer responsible for Uber's self-driving car business during his tenure at Uber, occupied a unique position of trust and confidence, owed fiduciary duties to Uber, and committed a fraud on Uber while acting in his fiduciary capacity making, Uber's claims non-dischargeable pursuant to 11 U.S.C. § 523(a)(4).

196. Levandowski's actual fraud and fraudulent misrepresentations which give rise to Uber's claims for contribution were wrongful acts, which Levandowski committed intentionally and

1 which necessarily caused Uber injury, and were done without just cause or excuse. The Court should  
 2 therefore also declare that all of Uber's claims for contribution are non-dischargeable pursuant to 11  
 3 U.S.C. § 523(a)(6).

4 **COUNT X**  
 5 **Incorporation Of Proof Of Claim**

6 197. Uber incorporates all of the above paragraphs as though fully set forth herein.

7 198. Uber incorporates by reference as though fully set forth herein its Proof of Claim  
 8 (Claim 8-1) filed on July 6, 2020 (the "Proof of Claim") in Bankruptcy Petition No. 20-30242  
 9 pending in the United States Bankruptcy Court for the Northern District of California and reasserts  
 10 those claims herein.

11 199. On March 4, 2020, Levandowski filed a voluntary Chapter 11 individual bankruptcy  
 12 petition in the Bankruptcy Court and filed a "List of Creditors Who Have the Largest Unsecured  
 13 Claims Against You and Are Not Insiders," naming Uber.

14 200. On July 6, 2020, Uber filed a Proof of Claim alleging various claims against  
 15 Levandowski and to the extent not otherwise asserted in these counterclaims, Uber incorporates and  
 16 reasserts those claims herein, including but not limited to: (1) contribution for the amount of the joint  
 17 and several portion of the Corrected Final Award in the Google Arbitration that Uber paid on behalf  
 18 of Lior Ron; (2) restitution of benefits conferred on Levandowski by Uber under the Indemnification  
 19 Agreement entered into between Uber and Levandowski on April 11, 2016, based upon Uber's  
 20 proper rescission of that agreement as a result of Levandowski's fraud; (3) consequential damages  
 21 arising out of Levandowski's fraud committed upon Uber; and (4) a defense against indemnification  
 22 based upon the Excluded Claims provision of the Indemnification Agreement and/or a claim for  
 23 reimbursement, recoupment and/or setoff as to all amounts subject to the Excluded Claims  
 24 provision.

25 201. To the extent not otherwise alleged in these counterclaims, Uber incorporates by  
 26 reference all claims in its July 6, 2020 Proof of Claim.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Uber prays for the following relief:

202. That the Complaint filed by Levandowski be dismissed in its entirety with prejudice, that judgment be entered in favor of Uber and against Levandowski, and that Levandowski be denied all relief requested in his Complaint;

203. A declaration that Uber has valid claims against Levandowski as alleged in the July 6, 2020 Proof of Claim;

204. A declaration that Levandowski is not subject to a release from claims;

205. A declaration that the Indemnification Agreement has been rescinded or is null and void;

206. A final judgment that Levandowski is not entitled to indemnification under the Indemnification Agreement because Levandowski fraudulently induced Uber to enter into that agreement;

207. A declaration that Levandowski is not entitled to indemnification for disgorgement of the Chauffeur Bonus and Related Compensation or any prejudgment interest related to the same;

208. A declaration that Levandowski is not entitled to indemnification for any amounts paid to him by a third party, Google, including the Chauffeur Bonus and Related Compensation, as well as any prejudgment interest associated with the same;

209. A declaration that Uber has no duty or obligation to indemnify Levandowski for the Arbitration Award or any resulting judgment because Cal. Civil Code § 2774 precludes indemnification due to Levandowski's felonious conduct;

210. A final judgment determining that Levandowski committed Post-Signing Specified Bad Acts that were the subject of Former Employer Claims, and an order from the Court that the Indemnification Agreement is null and void, including because Levandowski committed Post-Signing Specified Bad Acts;

211. A final judgment that Levandowski materially breached the Indemnification Agreement and that the agreement is not enforceable against Uber on account of that breach;

212. An award of consequential damages arising out and caused by Levandowski's fraud committed upon Uber; including but not limited to the value provided by Uber to Waymo in conjunction with its settlement agreement with Waymo;

213. An award of contribution for the value provided by Uber to Waymo in conjunction with its settlement agreement with Waymo;

214. An award of consequential damages arising out of and caused by Levandowski's breach of the Indemnification Agreement;

215. Setoff and/or recoupment of any amounts Levandowski owes to Uber against any amounts Uber is otherwise found to owe to Levandowski;

216. An award of contribution for the portion of the joint and several part of the Corrected Final Award in *Google, LLC v. Anthony Scott Levandowski and Lior Ron* that Uber paid on behalf of Lior Ron;

217. An final judgment providing restitution of benefits conferred on Levandowski by Uber under the Indemnification Agreement based on Uber's rescission of the Indemnification Agreement;

218. An Order from the Court that the amounts that Levandowski seeks to recover under the Indemnification Agreement may not be recovered because they are based upon Excluded Claims, or in the alternative that at least over 75% of the amounts Levandowski seeks to compel Uber to pay, plus attorneys' fees and costs, are Excluded Claims related to the Tyto Misconduct and not subject to indemnification;

219. A declaration that Uber's claims and the damages sought herein are not subject to discharge pursuant to 11 U.S.C. § 523(a)(2)(A), § 523(a)(4), and § 523(a)(6);

220. Prejudgment and post judgment interest on any amounts awarded to Uber;

221. Attorneys' fees and costs incurred by Uber in defending this action, including fees incurred in the Bankruptcy proceeding; and

222. Such other and further relief as is just and proper.



1 Dated: October 13, 2020

Respectfully submitted,

2 PACHULSKI STANG ZIEHL & JONES LLP

3 By: /s/ Debra I. Grassgreen

4 Debra I. Grassgreen

5 Miriam Manning

6 -and-

7 David J. Bradford

8 Catherine Steege

9 Terri L. Mascherin

Katharine R. Ciliberti

JENNER & BLOCK LLP

10 *Counsel for Uber Technologies, Inc.*

PACHULSKI STANG ZIEHL & JONES LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO, CALIFORNIA

# EXHIBIT 1

**JAMS ARBITRATION  
CASE REFERENCE NO 1100086069**

GOOGLE, LLC,

Claimant

and

ANTHONY SCOTT LEVANDOWSKI

**CORRECTED FINAL AWARD**

And

LIOR RON,

Respondents

<b>Counsel for Claimant</b>	<b>Counsel for Respondents</b>
<p>Keker &amp; Van Nest LLP 633 Battery Street San Francisco, CA 94111</p> <p>Robert A. Van Nest Rachael E. Meny Jennifer A. Huber Thomas R. Gorman W. Hamilton Jordan Jo W. Golub Ben Berkowitz Reid Mullen Molly Caldwell Villagra</p>	<p><b><i>Attorneys for Respondent Anthony Levandowski</i></b></p> <p>Goodwin Procter LLP 135 Commonwealth Drive Menlo Park, CA 94025</p> <p>Neel Chatterjee Brett M. Schuman Rachel M. Walsh Andrew Ong</p> <p><b><i>Attorneys for Respondent Lior Ron</i></b></p> <p>Taylor &amp; Patchen LLP One Ferry Building, Suite 355 San Francisco, CA 94111</p> <p>Stephen E. Taylor Jonathan A. Patchen Cheryl A. Cauley Karan S. Dhadialla Daniel P. Martin</p>



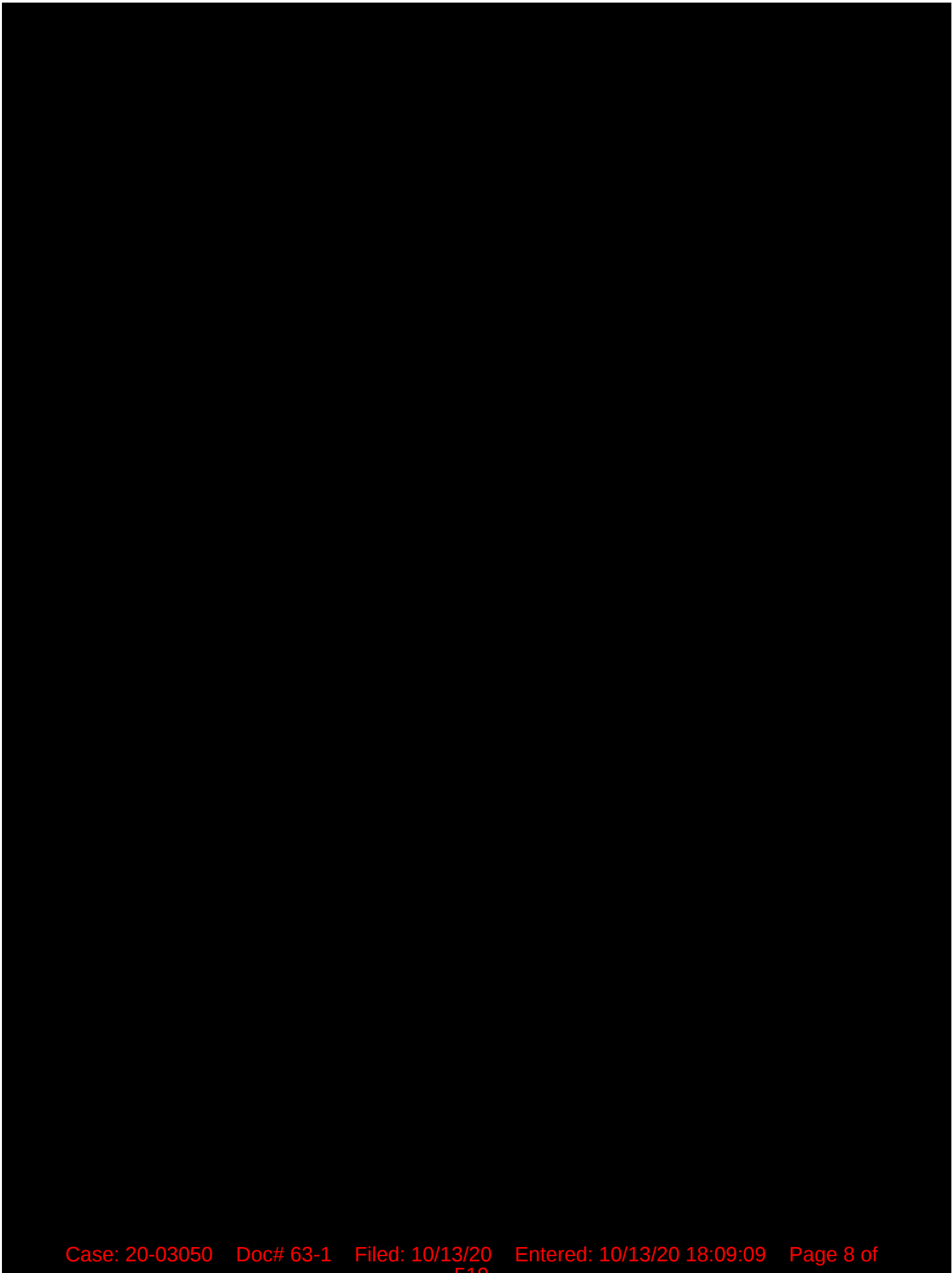


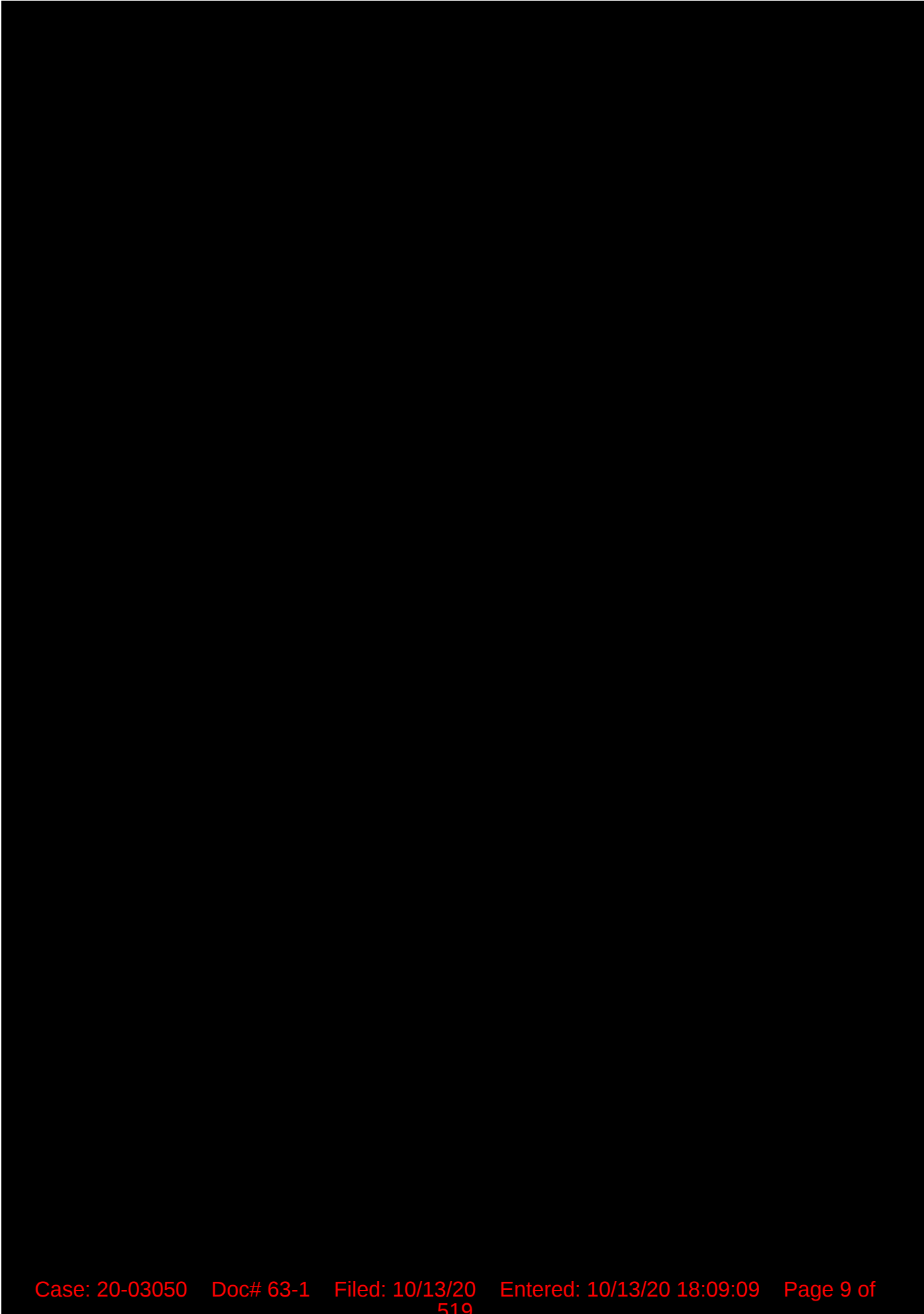


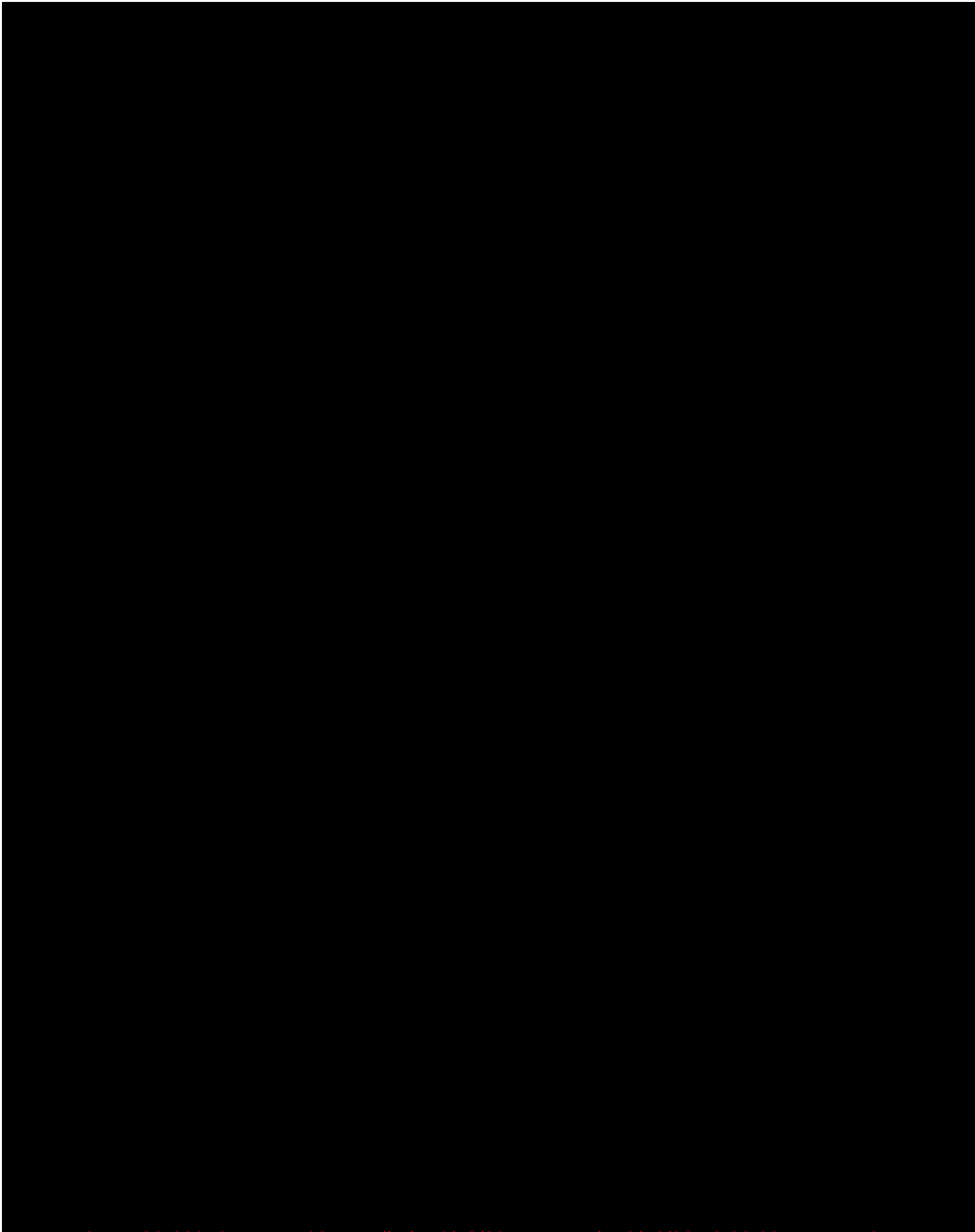
















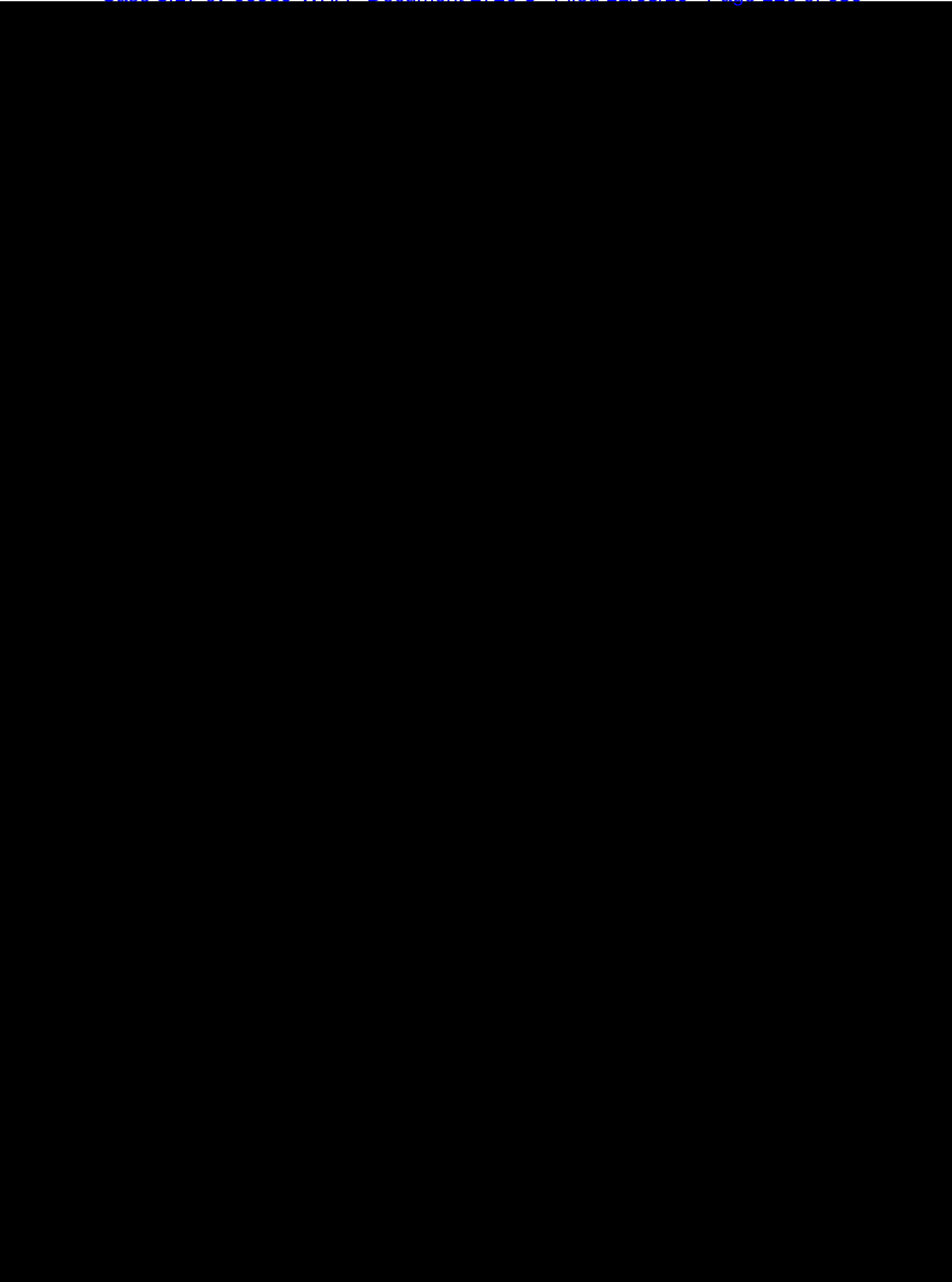


































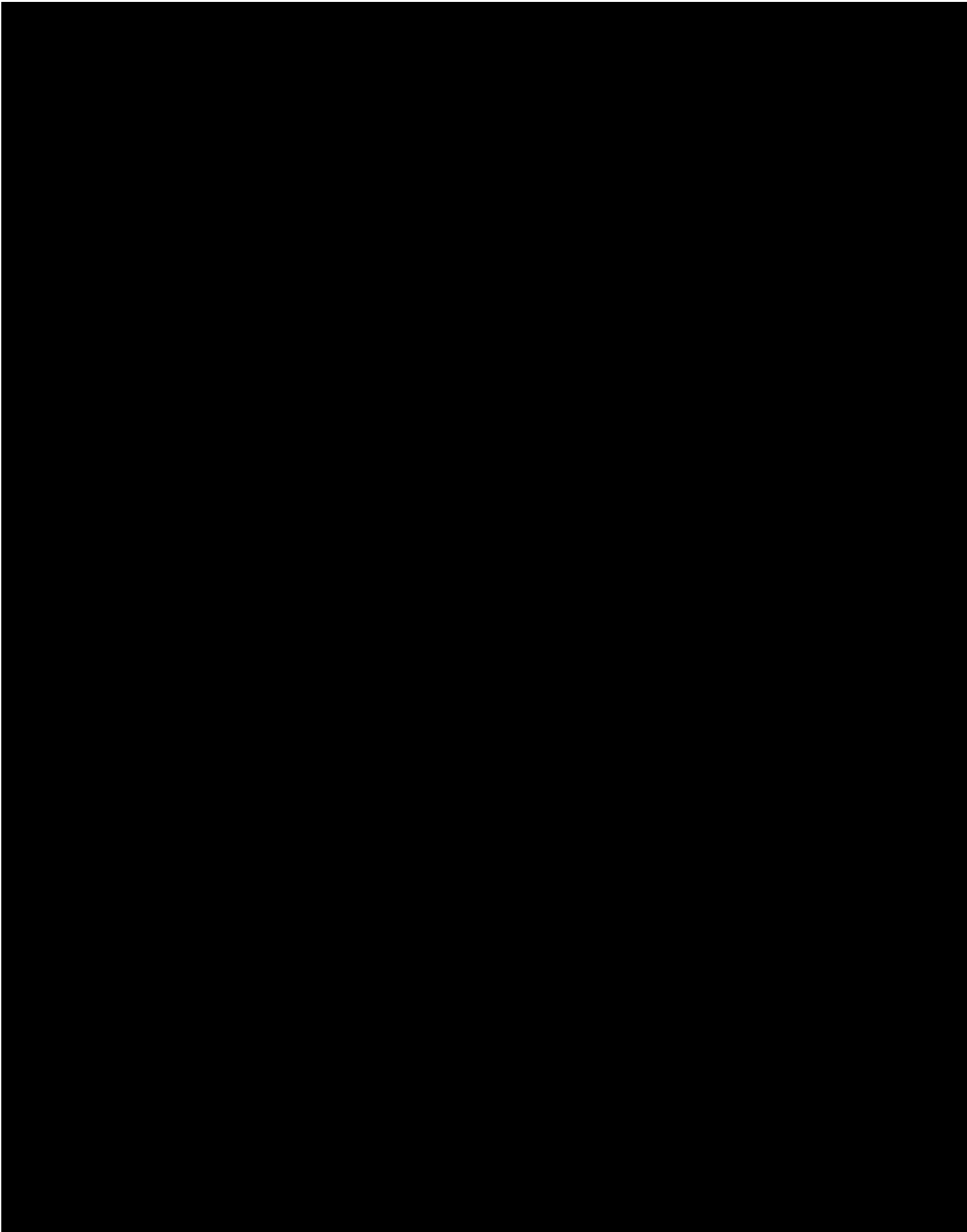






























































































































































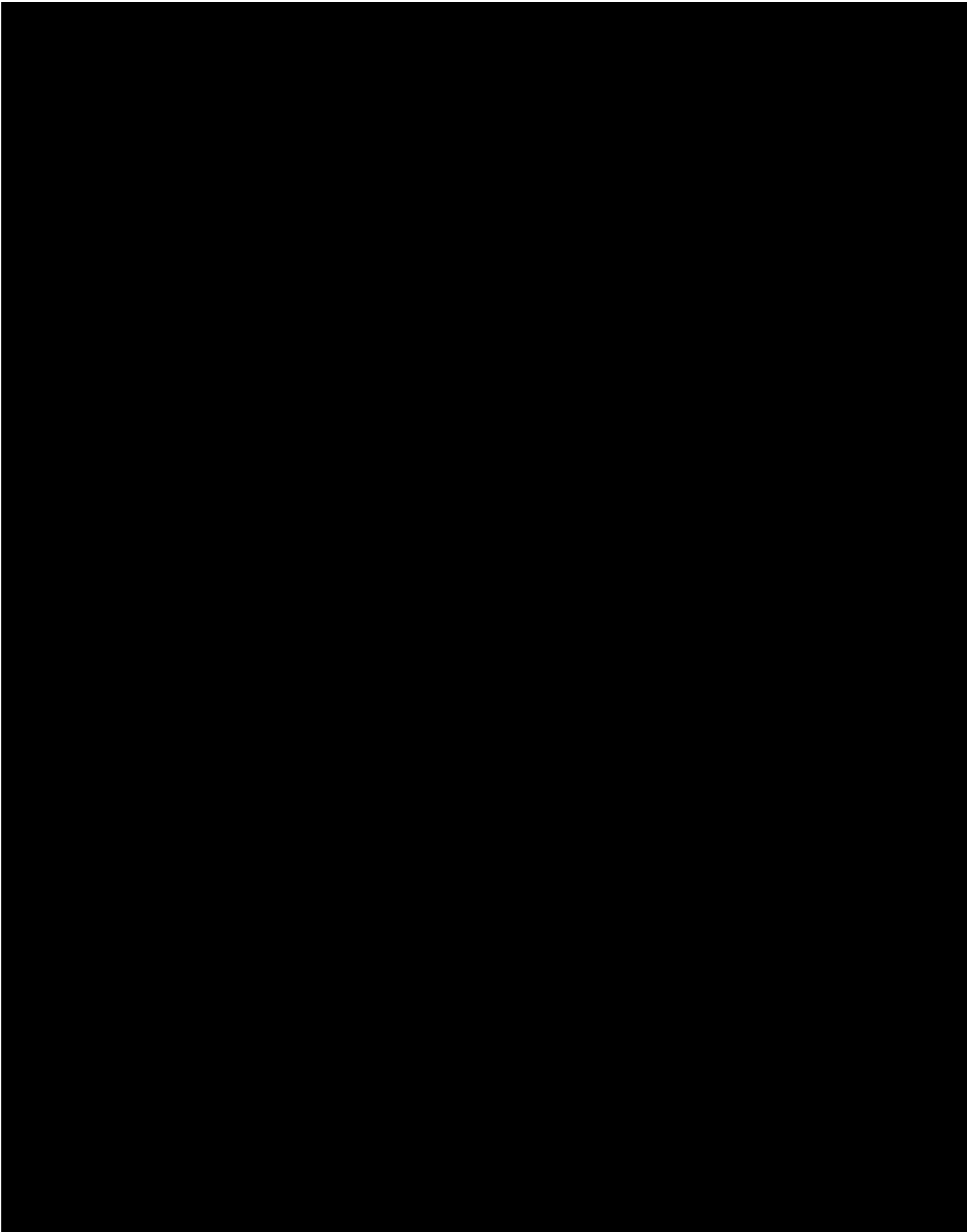
























































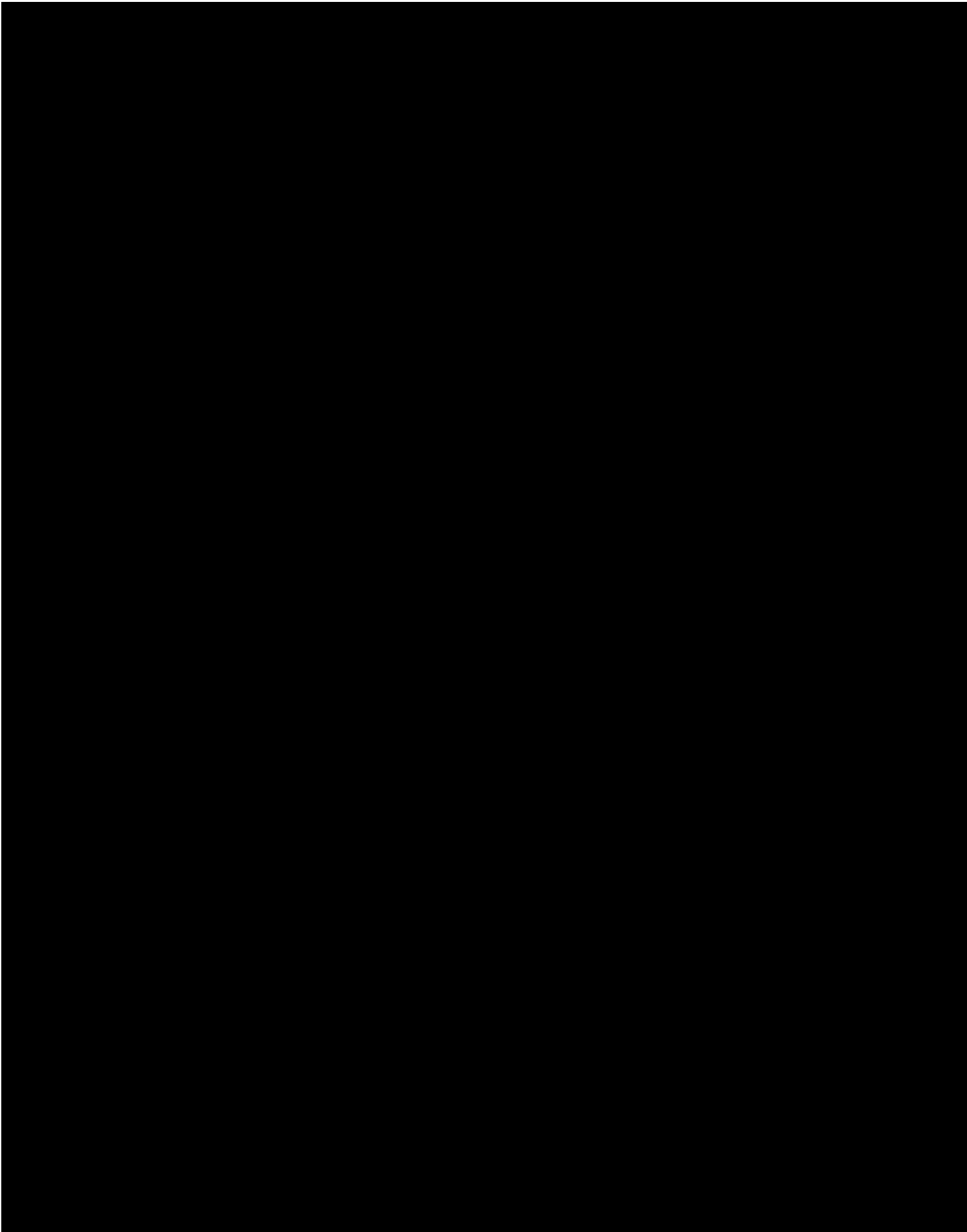


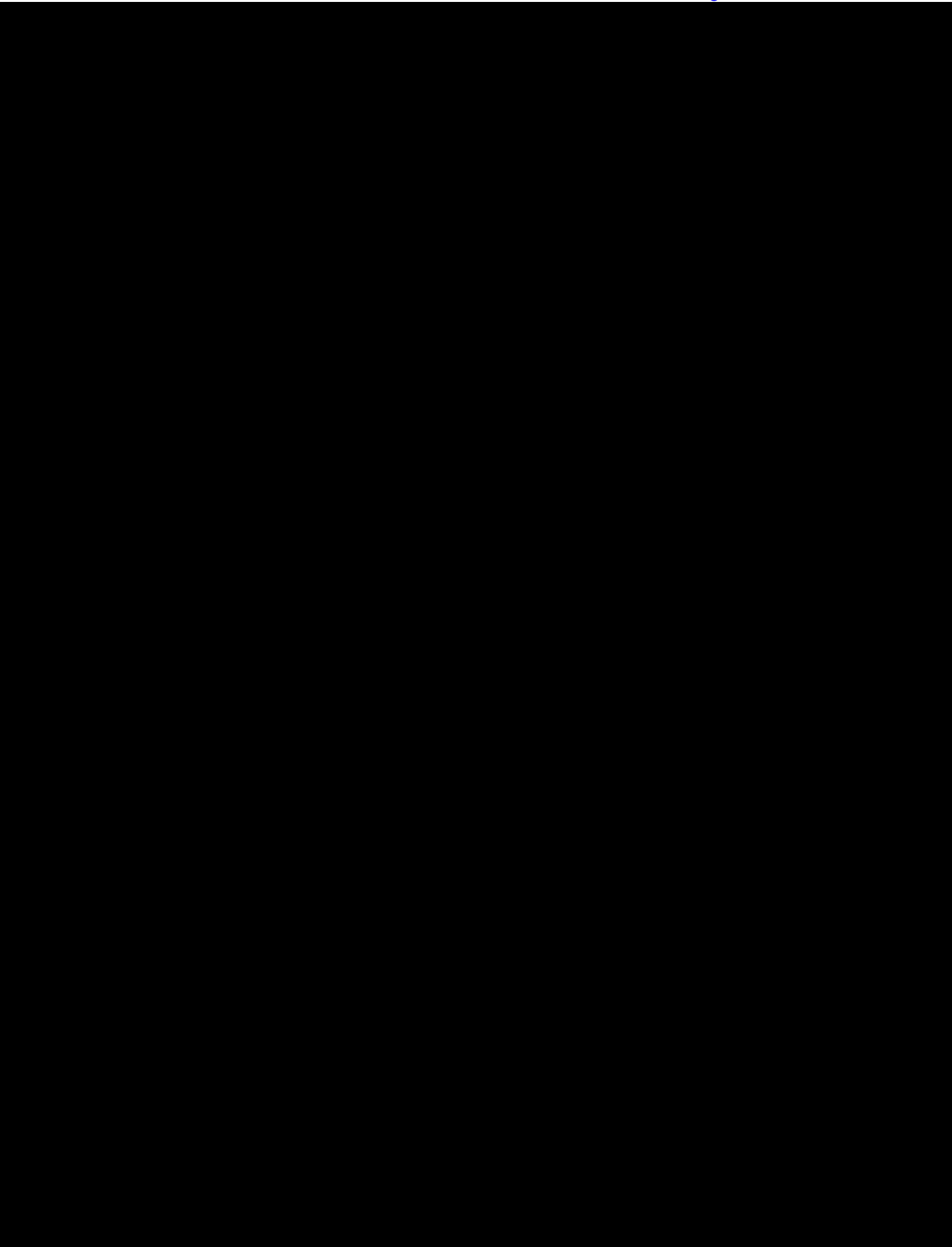




























# EXHIBIT 2

***EXECUTION VERSION***  
***Confidential***

**AGREEMENT AND PLAN OF MERGER**

**by and among**

**Otto Trucking LLC, a Delaware limited liability company;**

**Uber Technologies, Inc., a Delaware corporation;**

**Uber Freight Holding Corporation, a Delaware corporation;**

**Zing Merger Sub II, LLC, a Delaware limited liability company; and**

**the Company Unitholder Representative**

**Dated as of August 5, 2018**



























































































































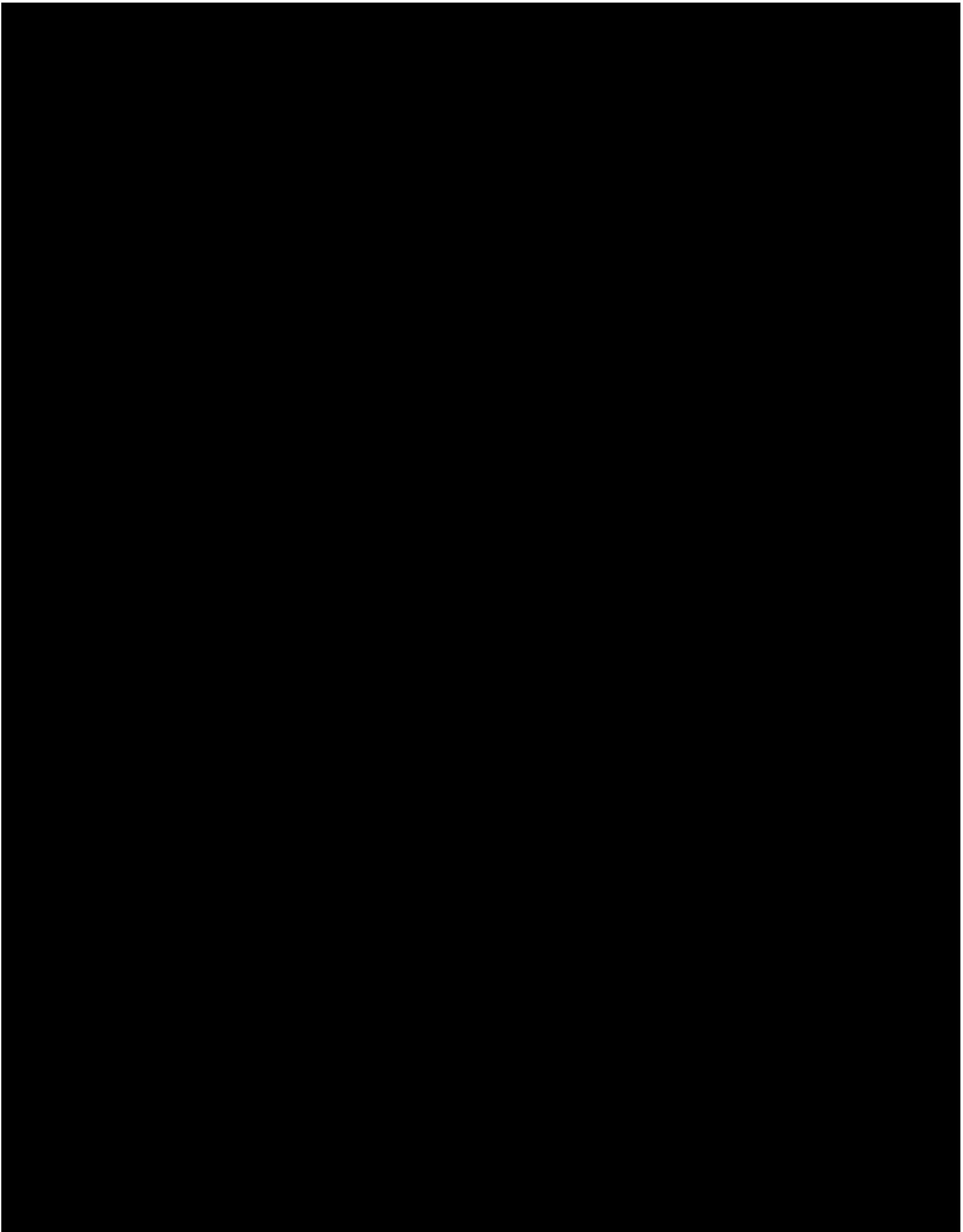


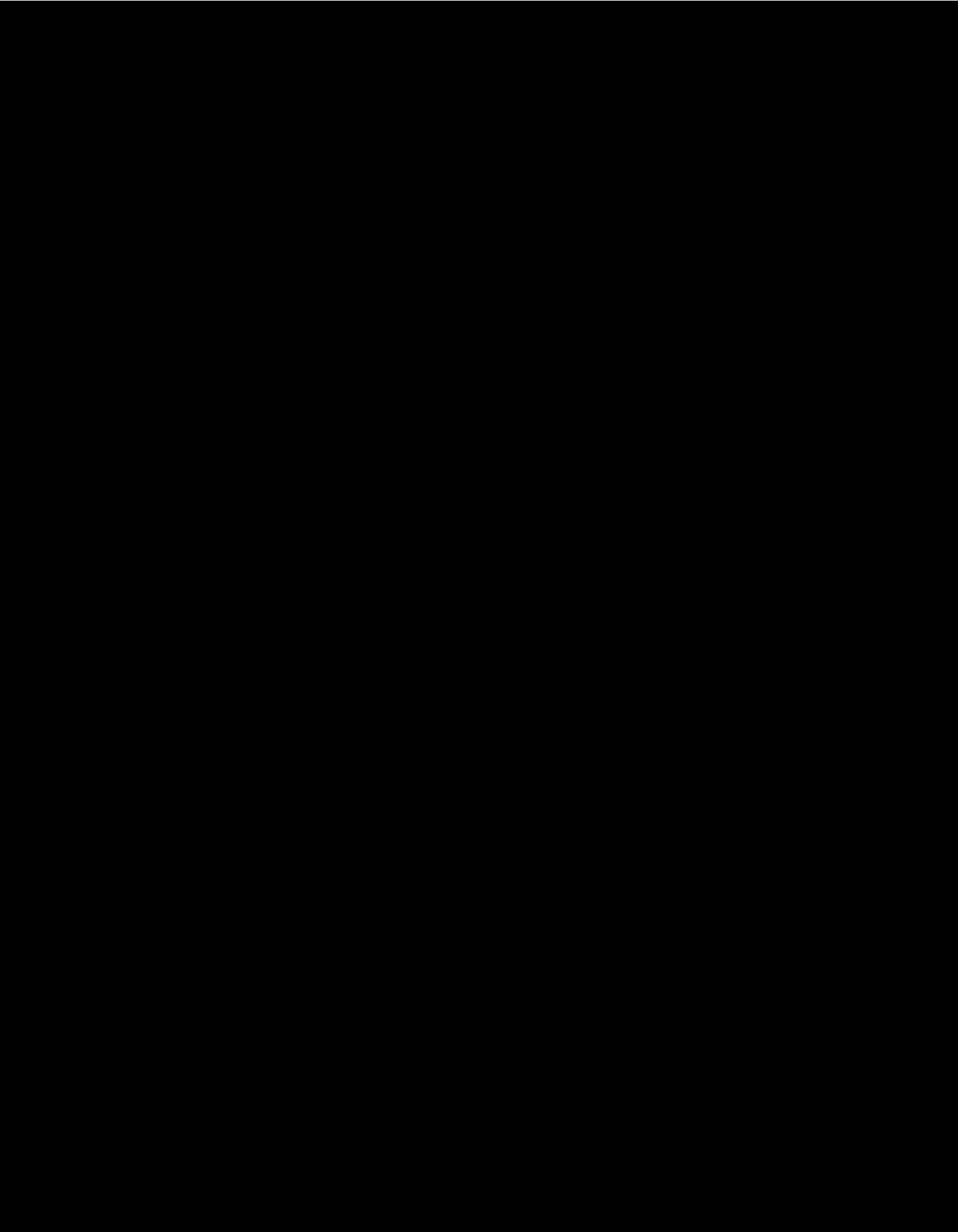


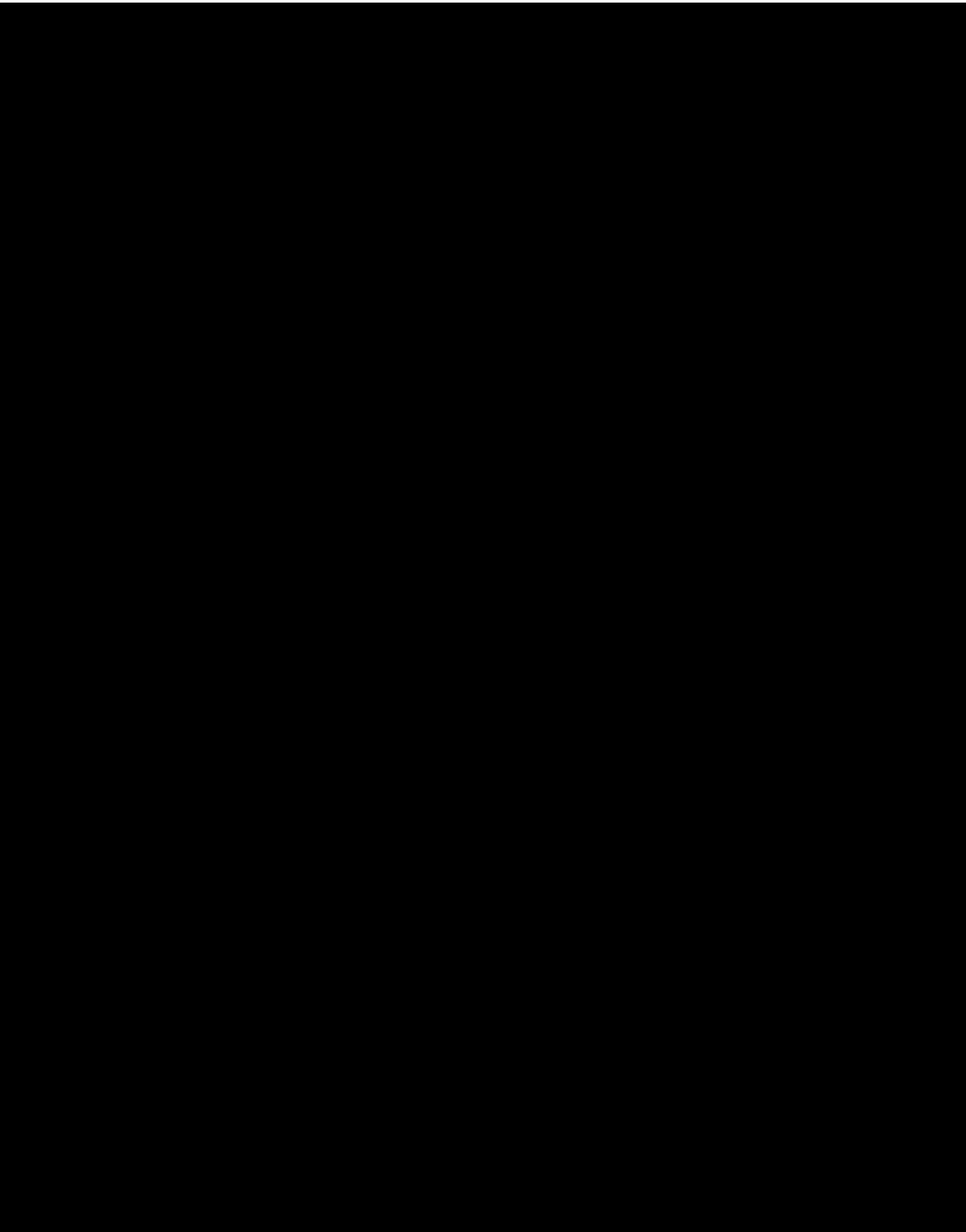




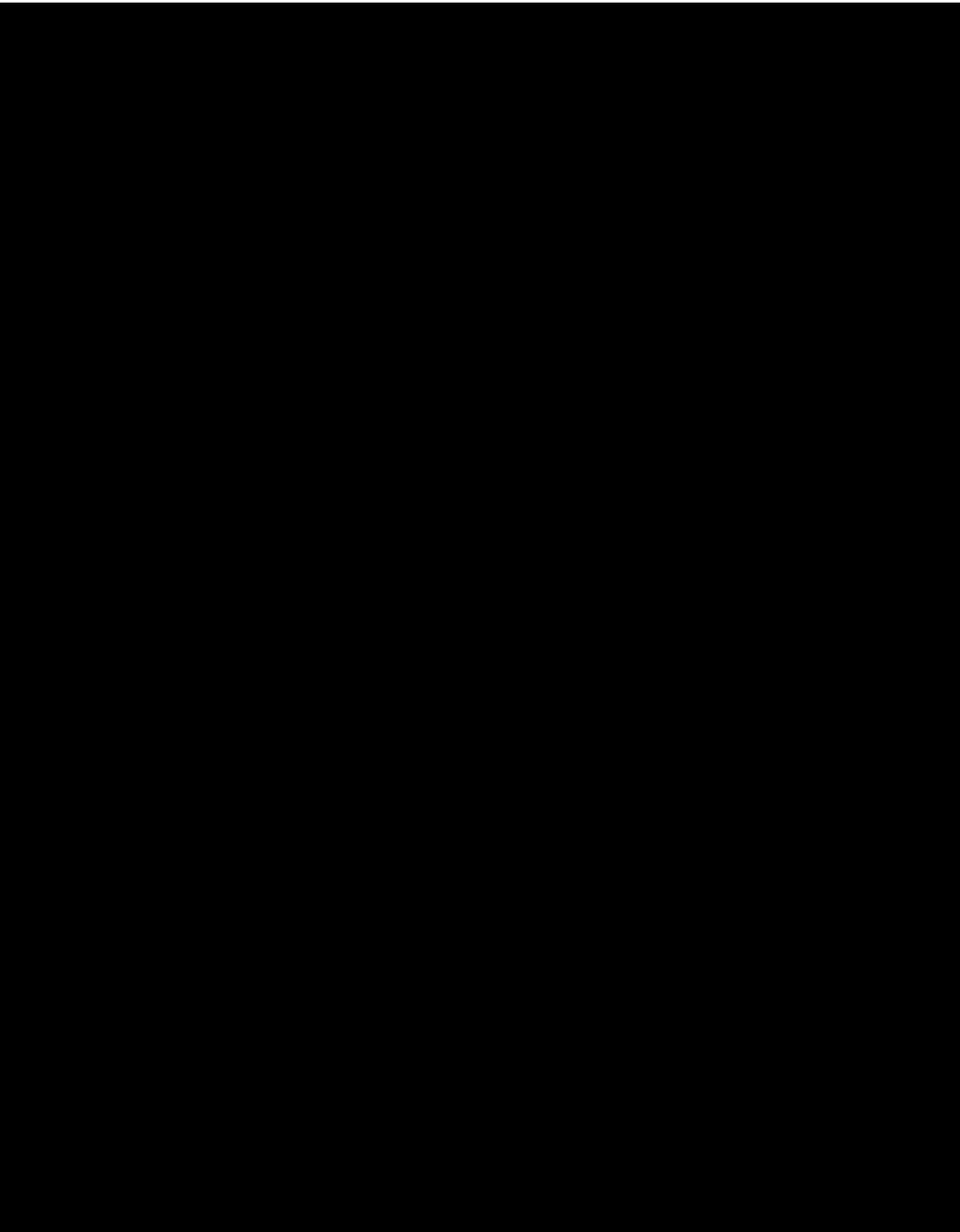


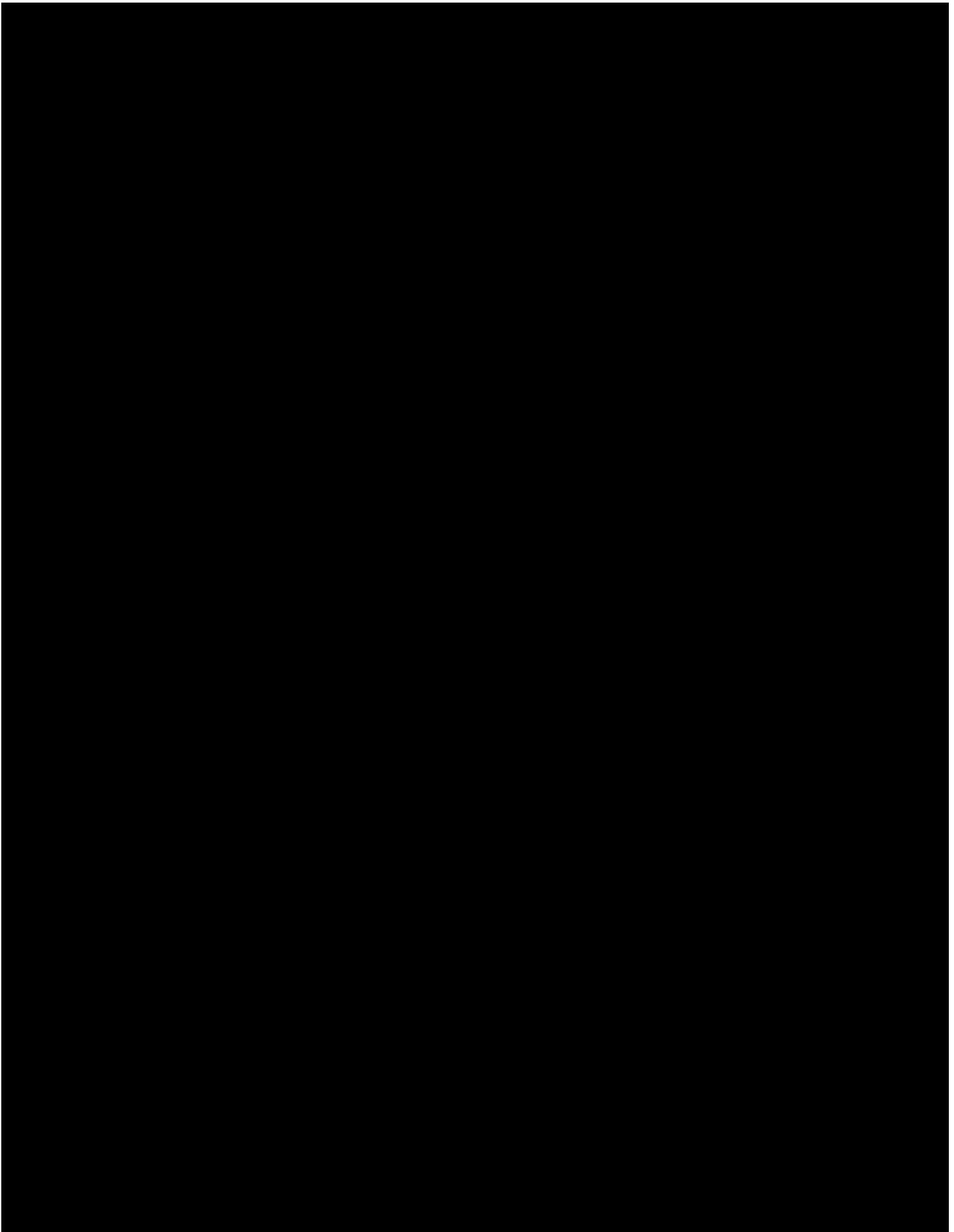


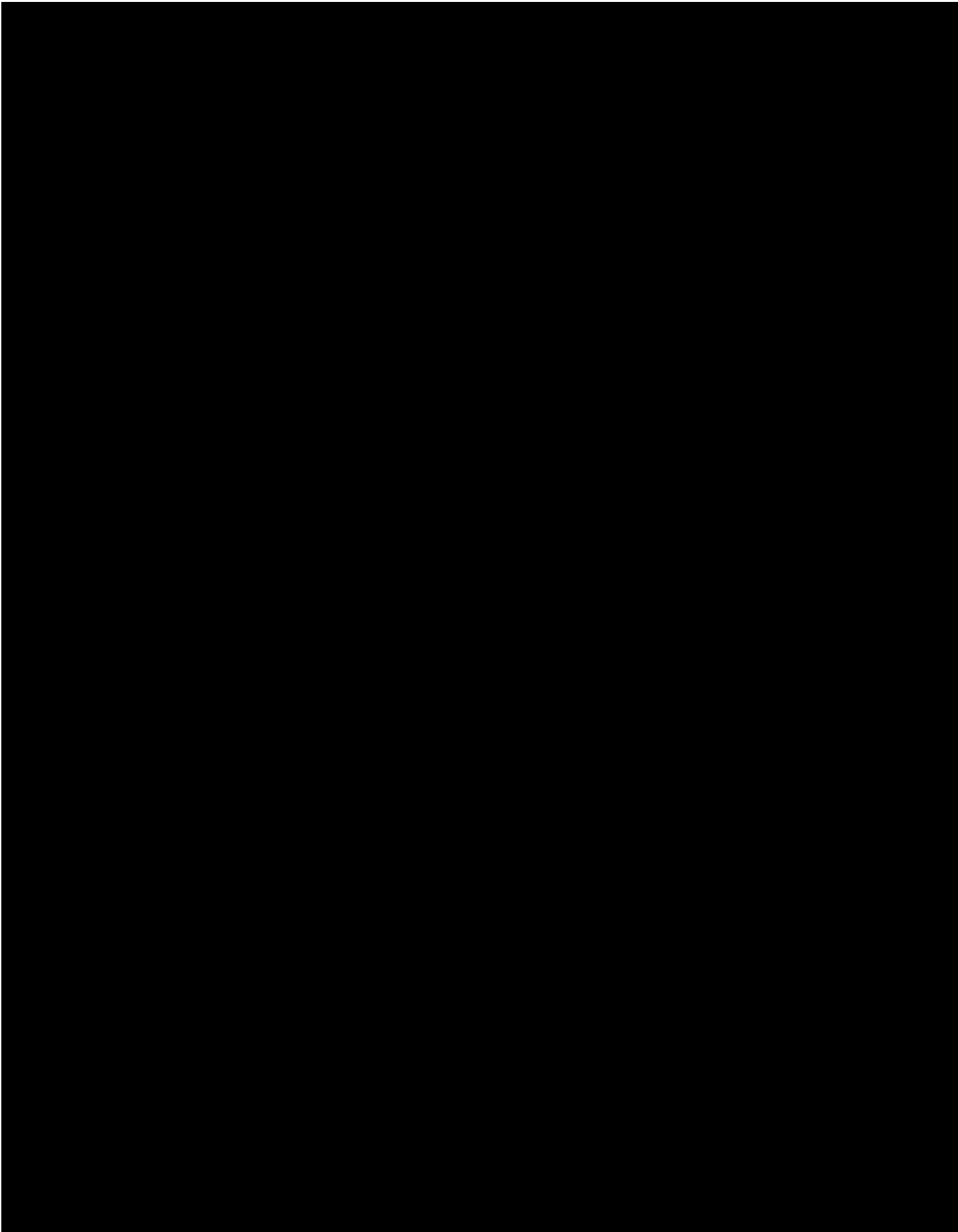




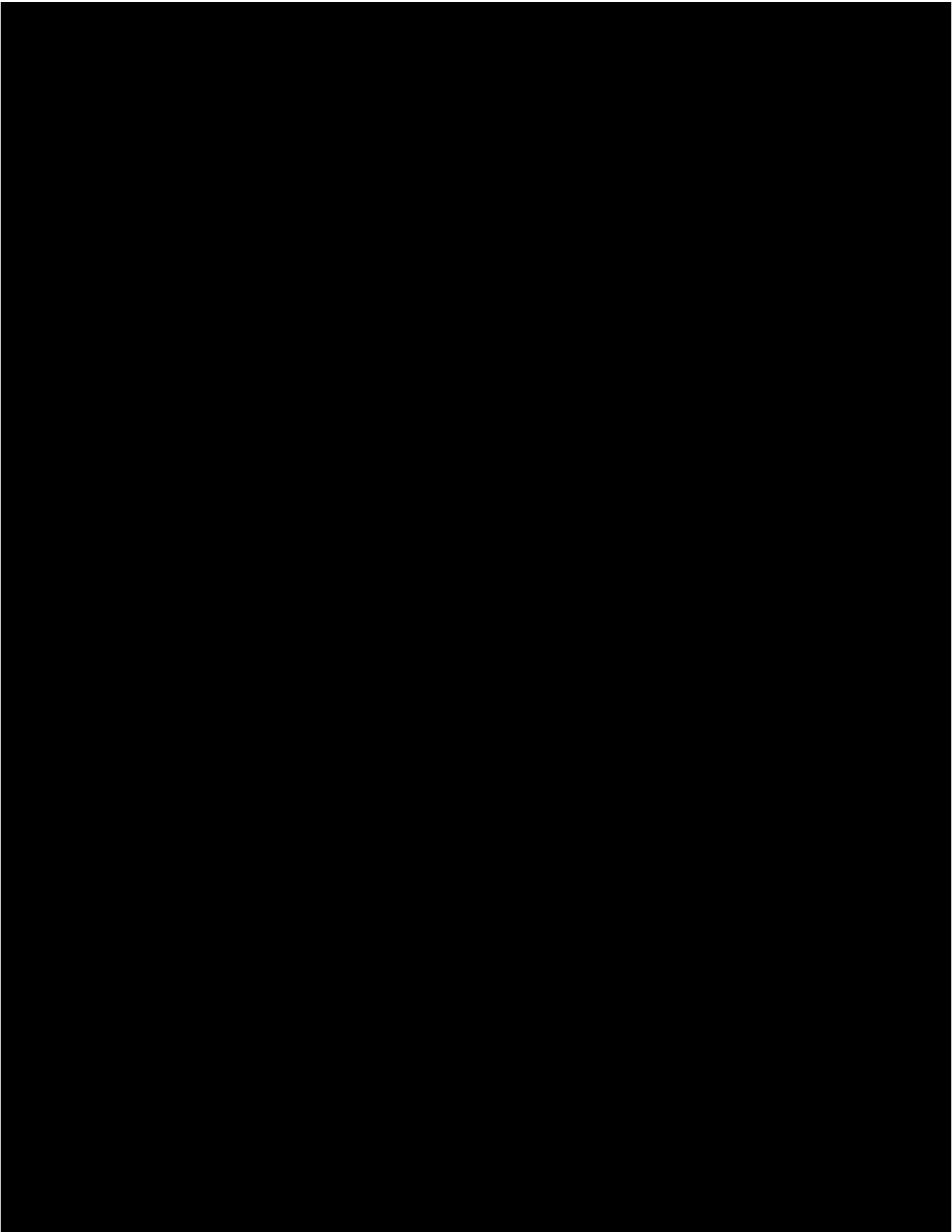








































































































































































































































































































































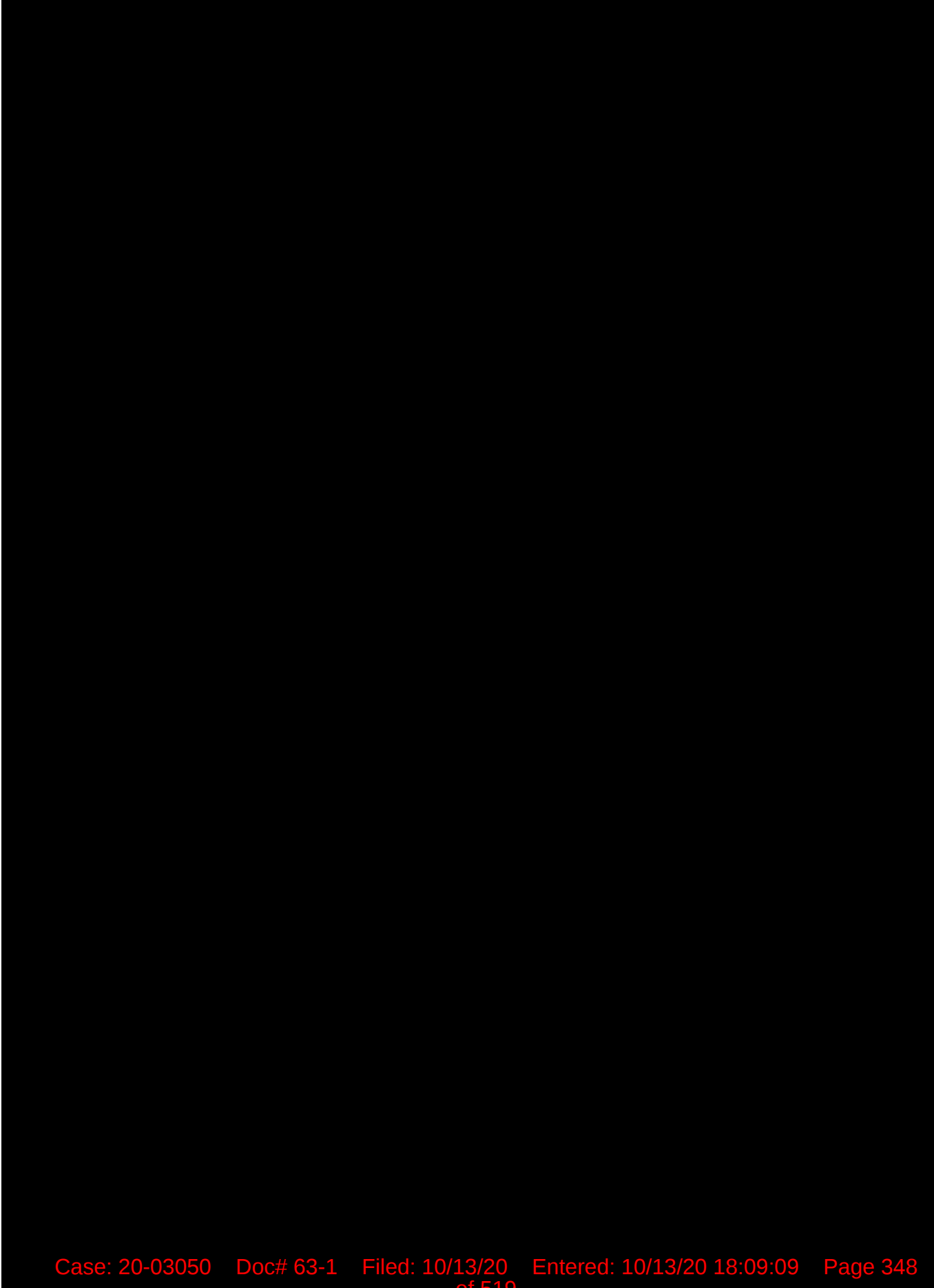


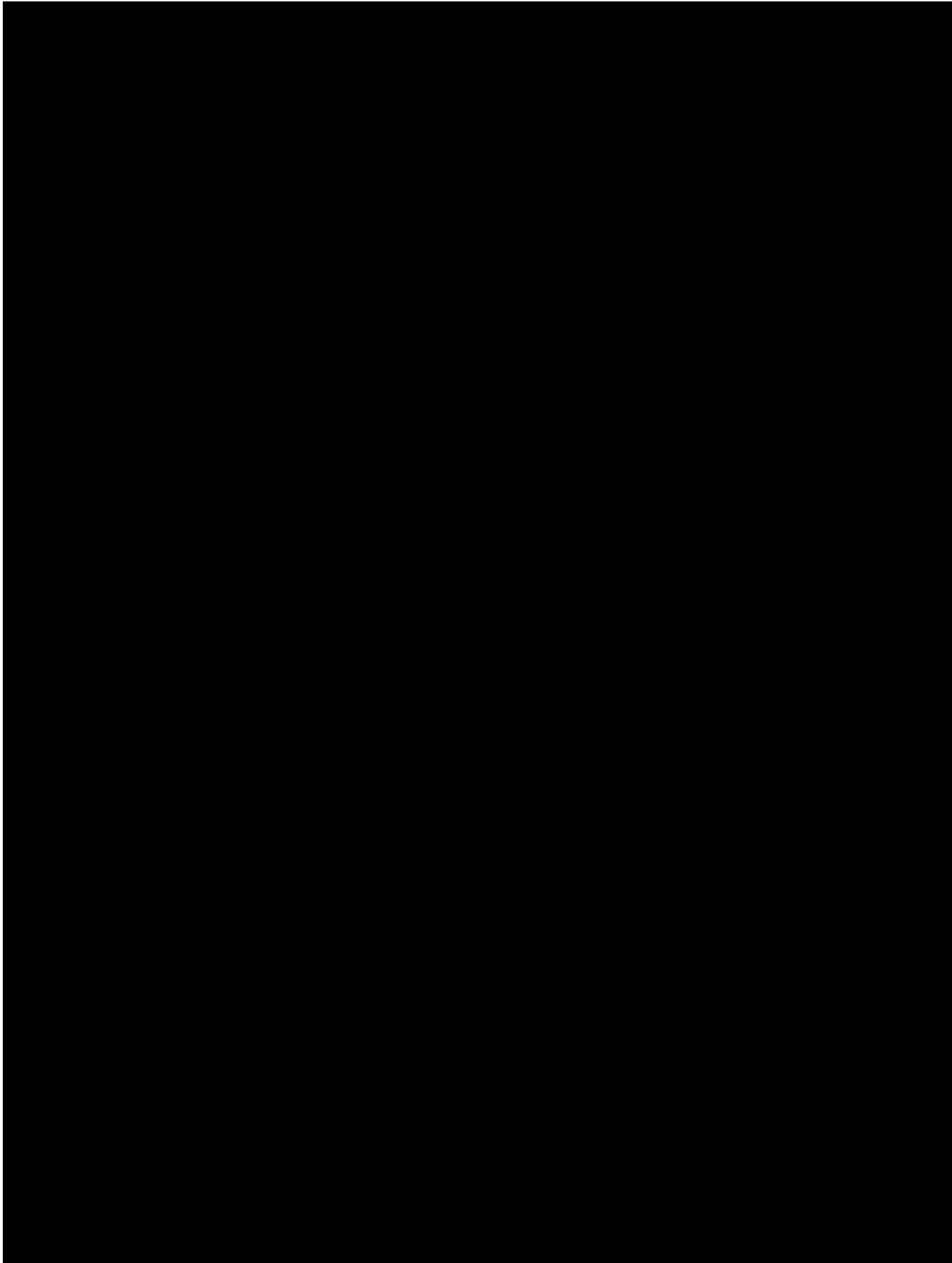


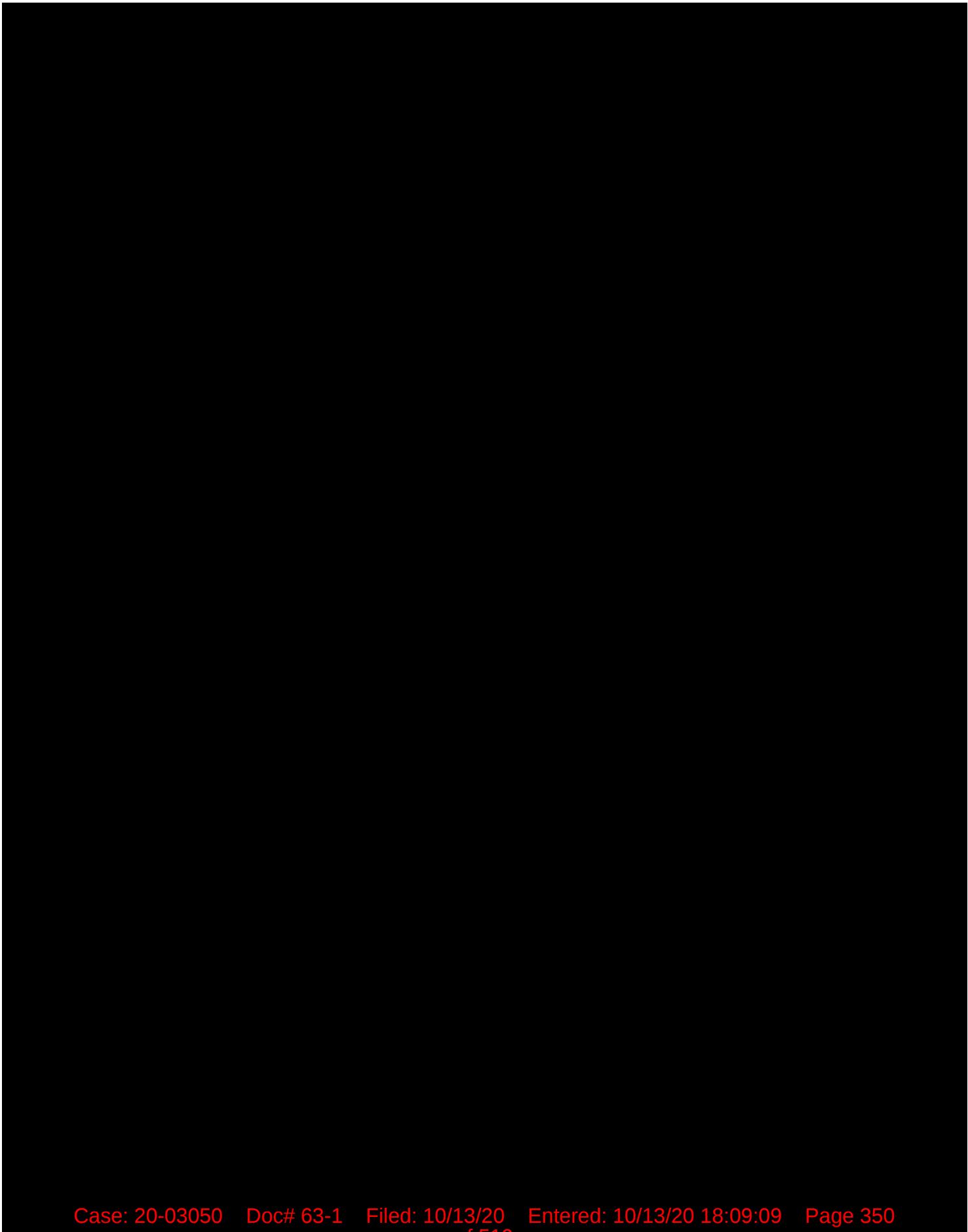


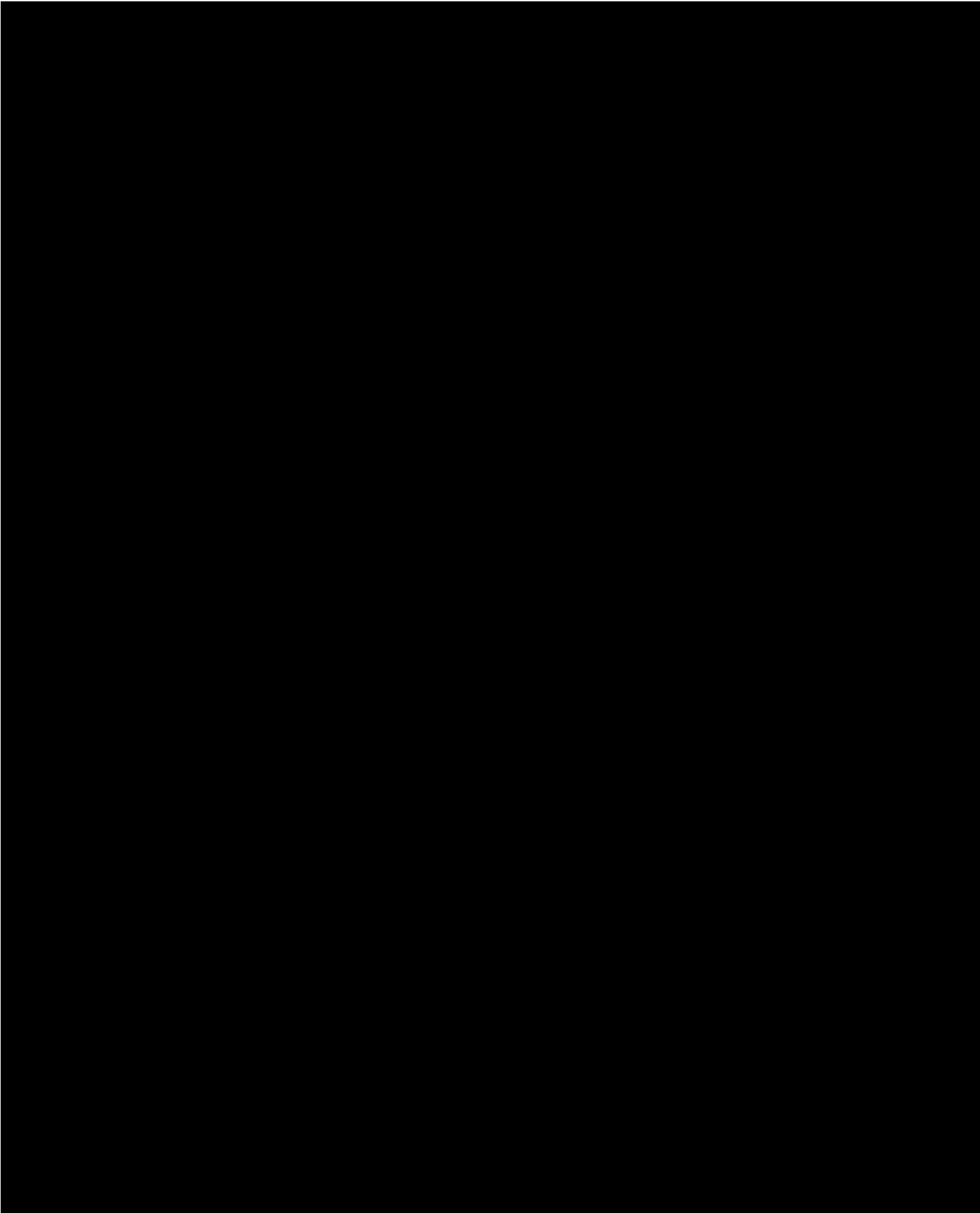
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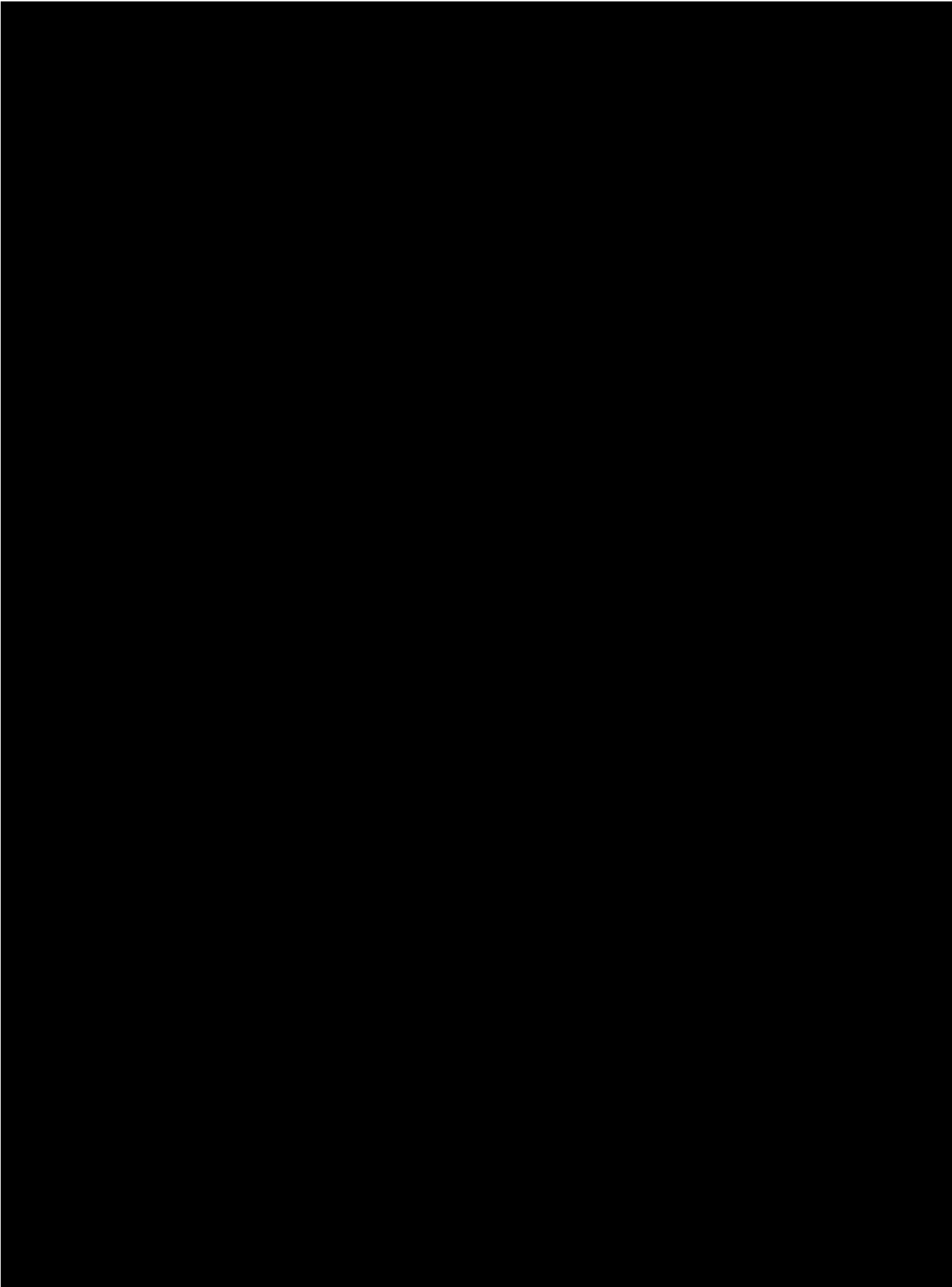
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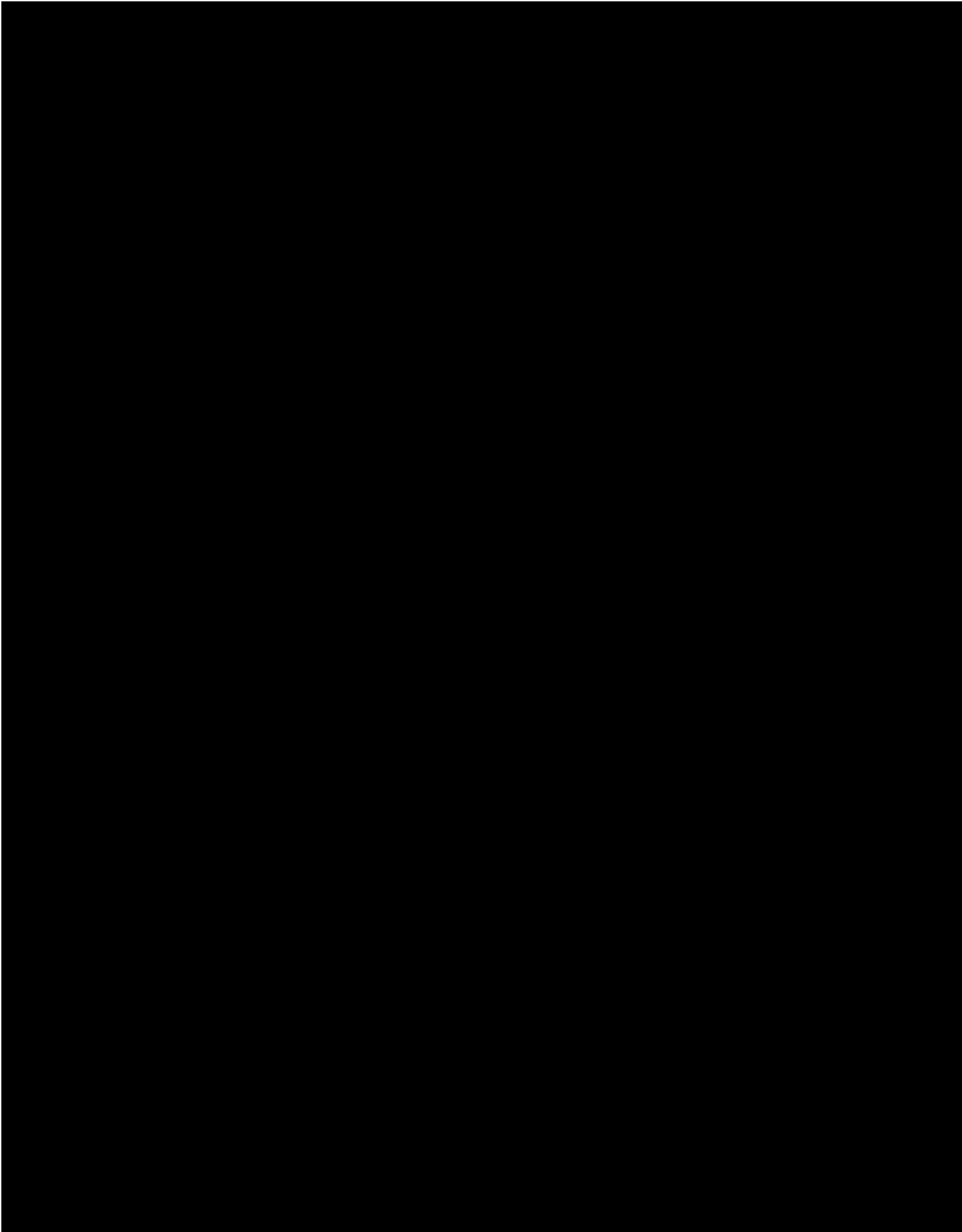


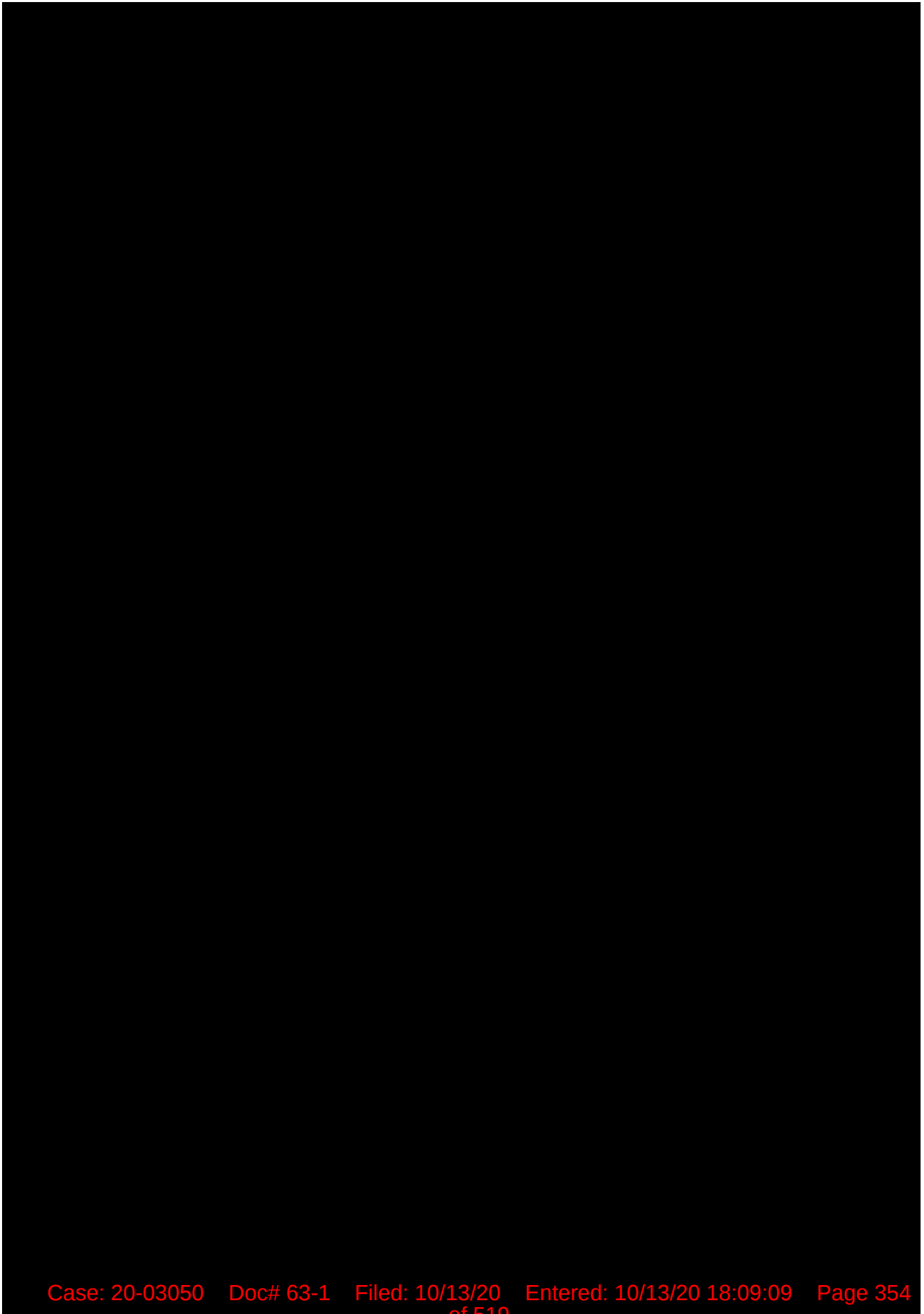




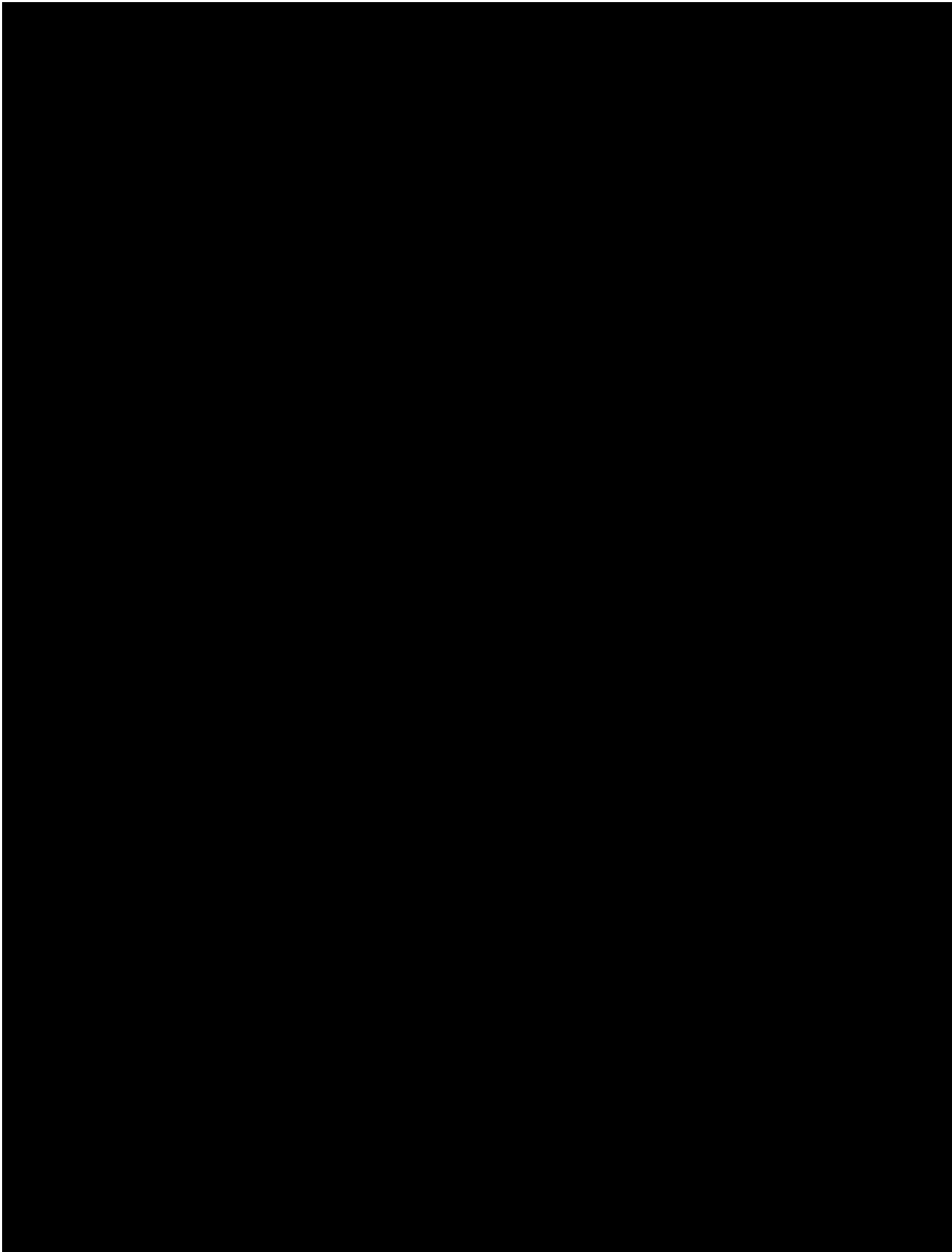




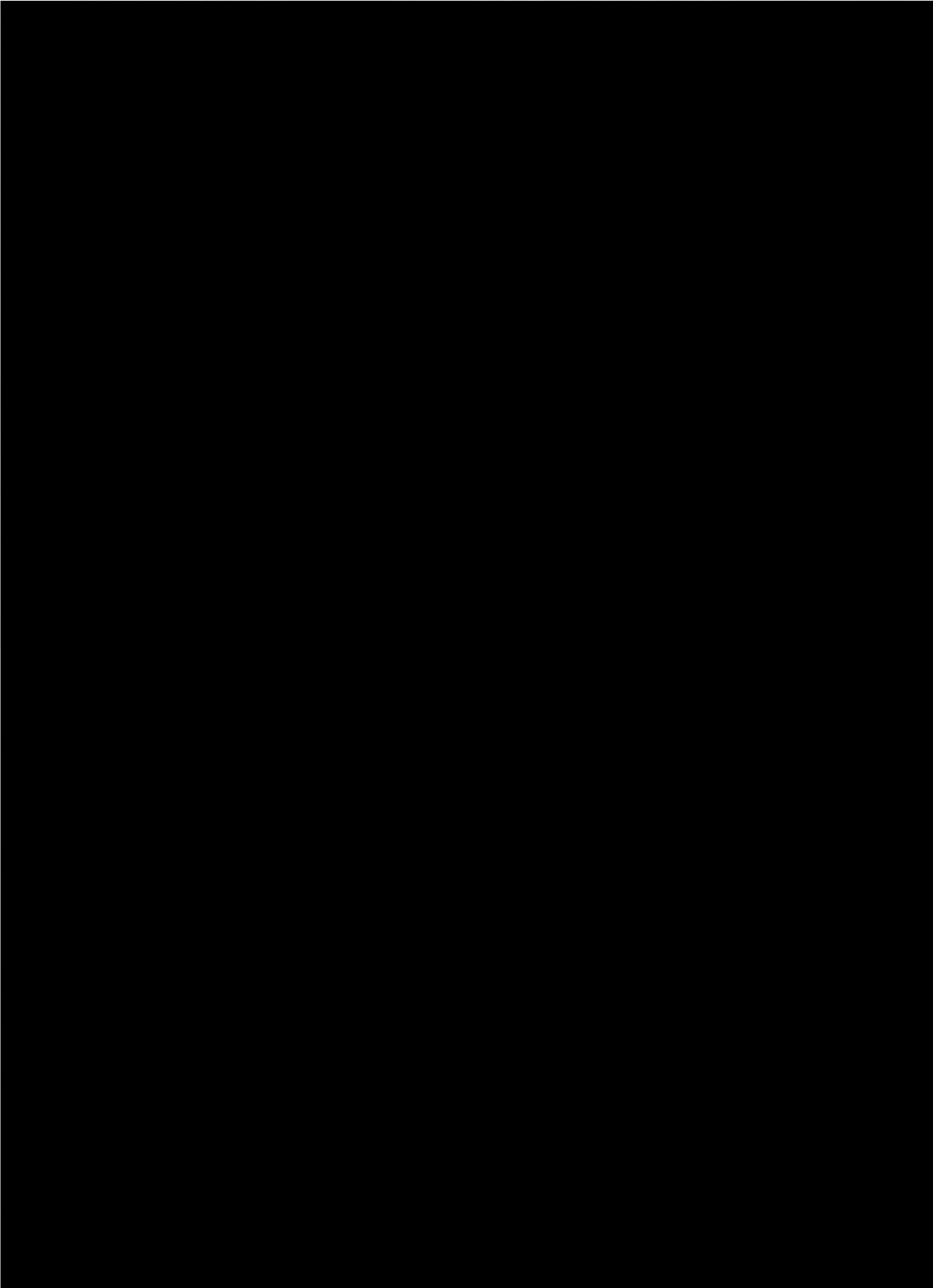


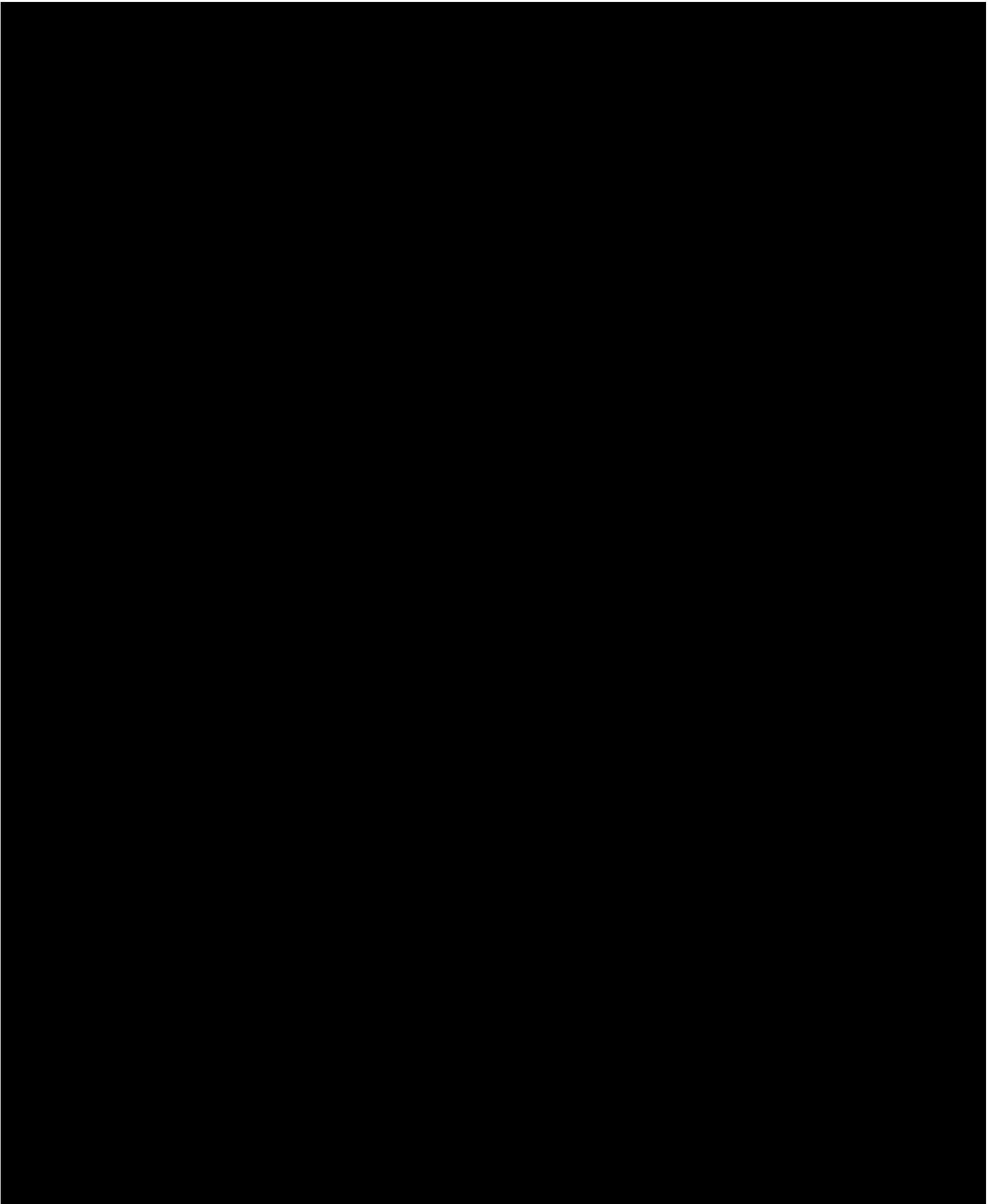


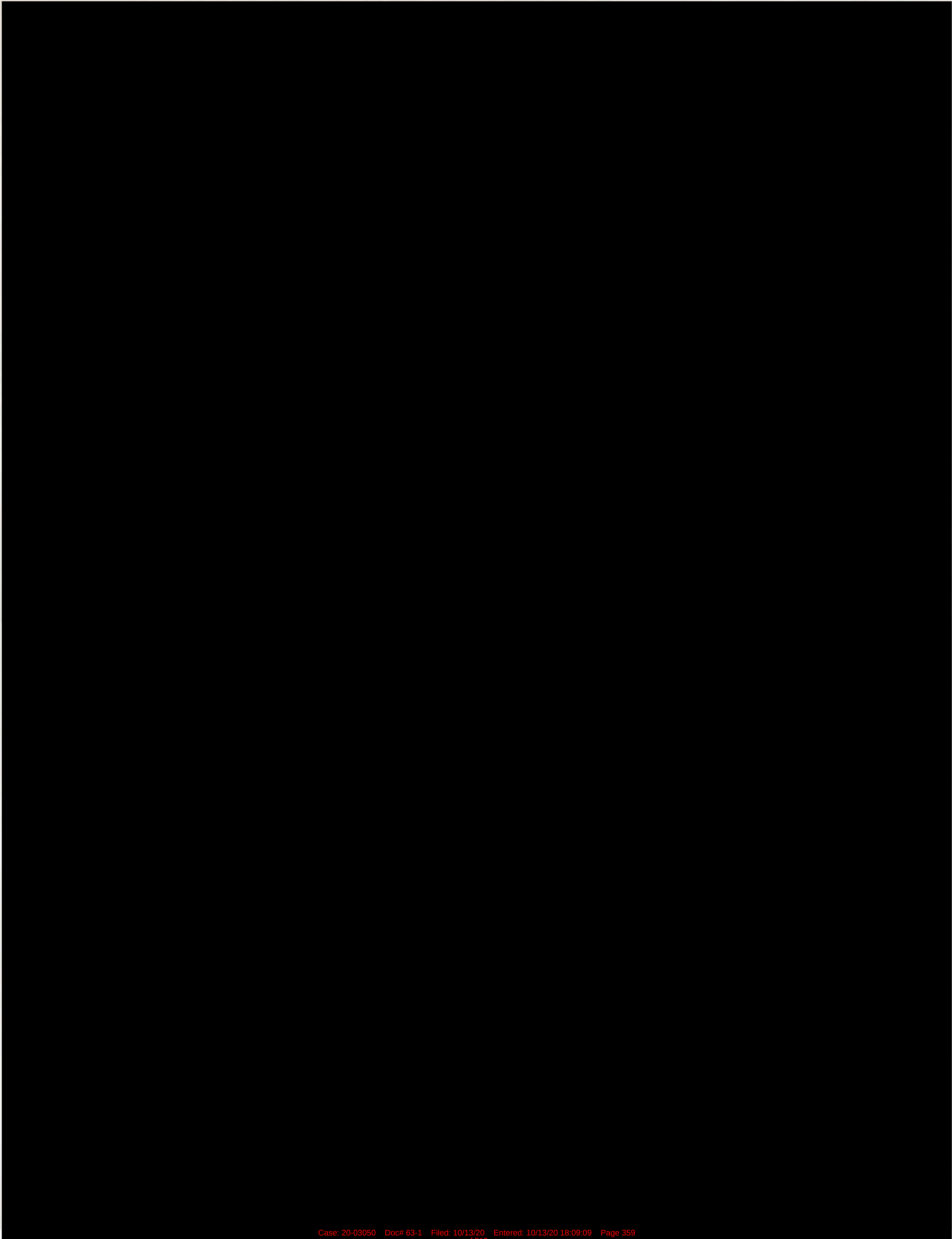








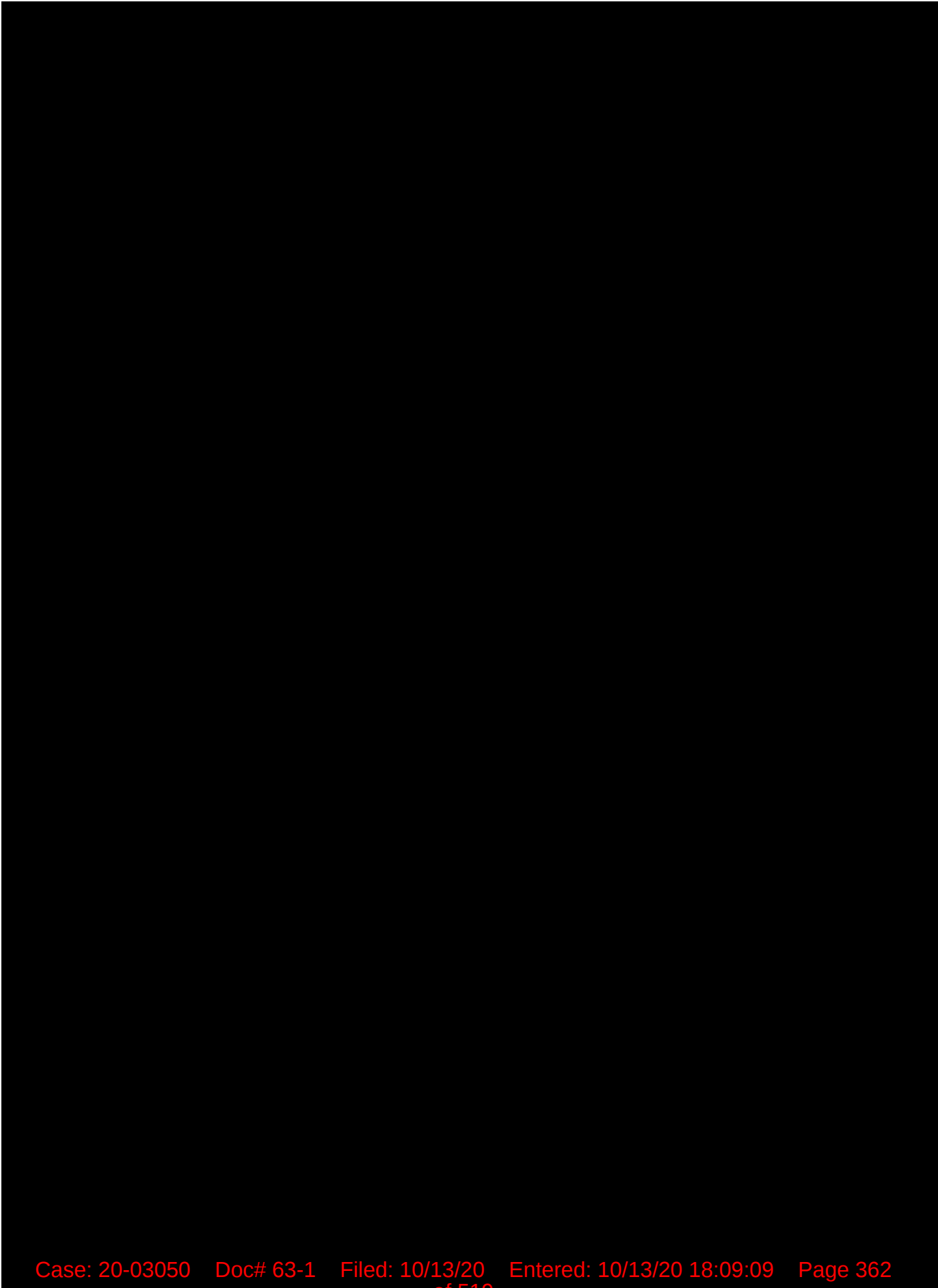




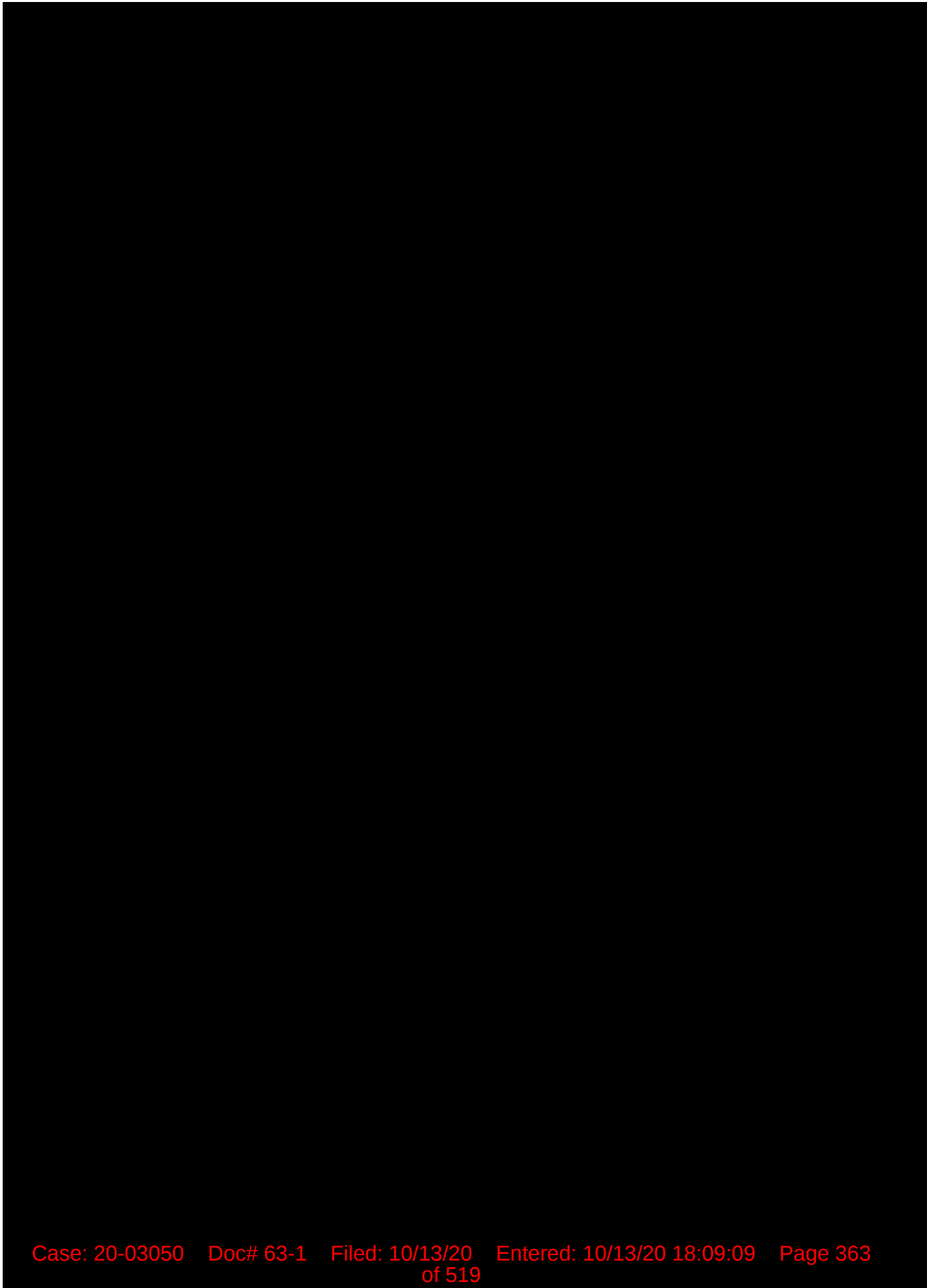
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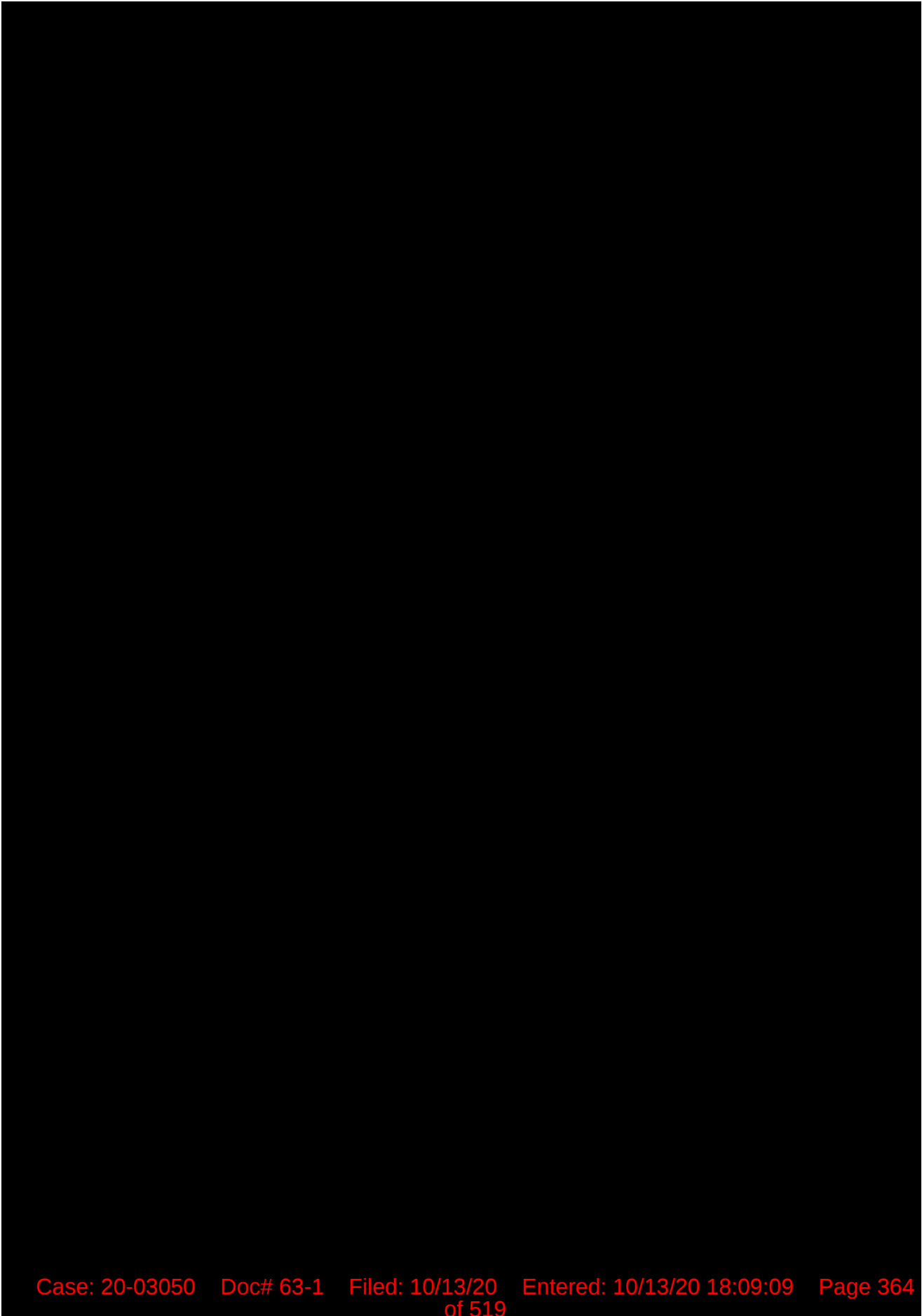
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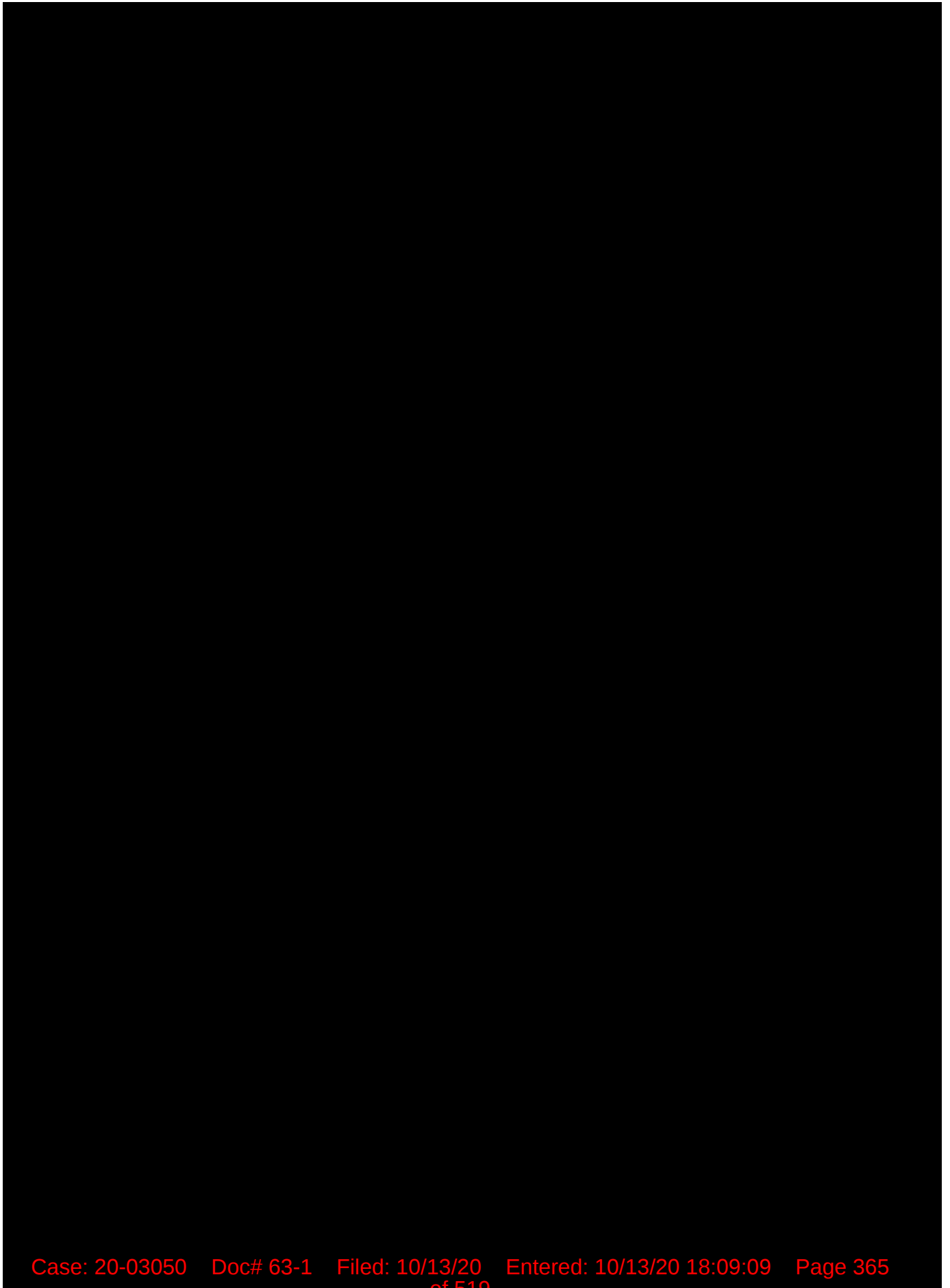
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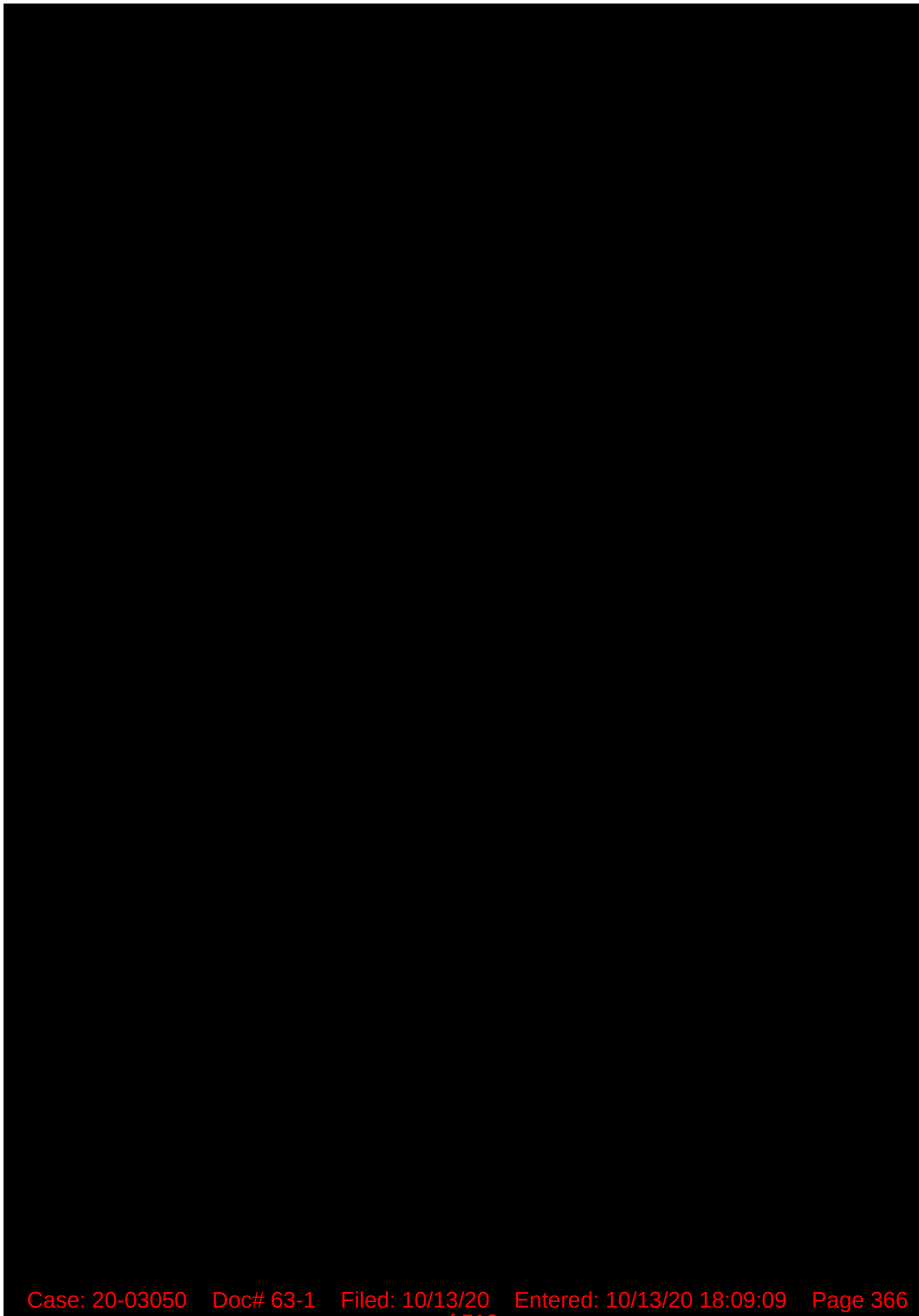


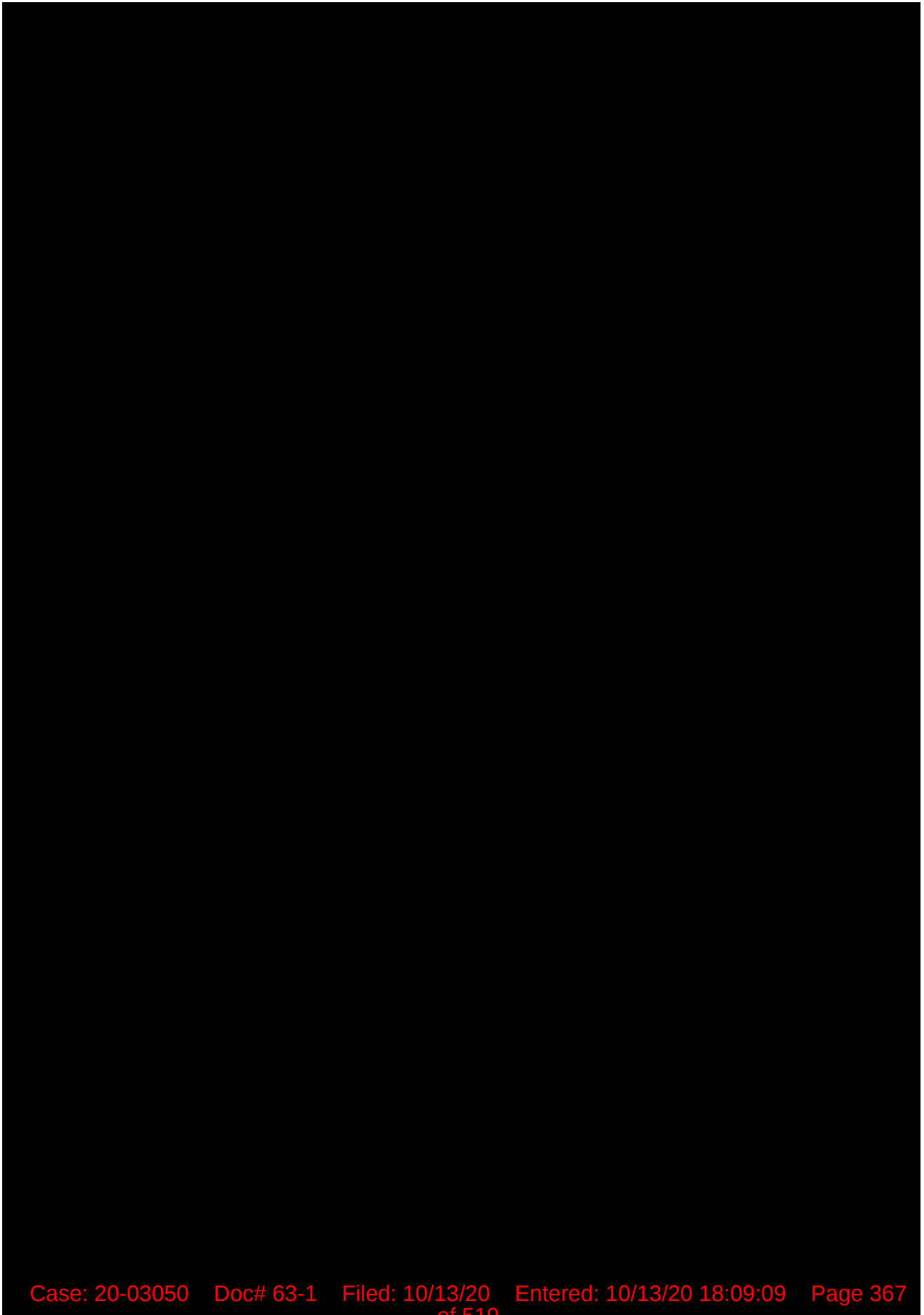


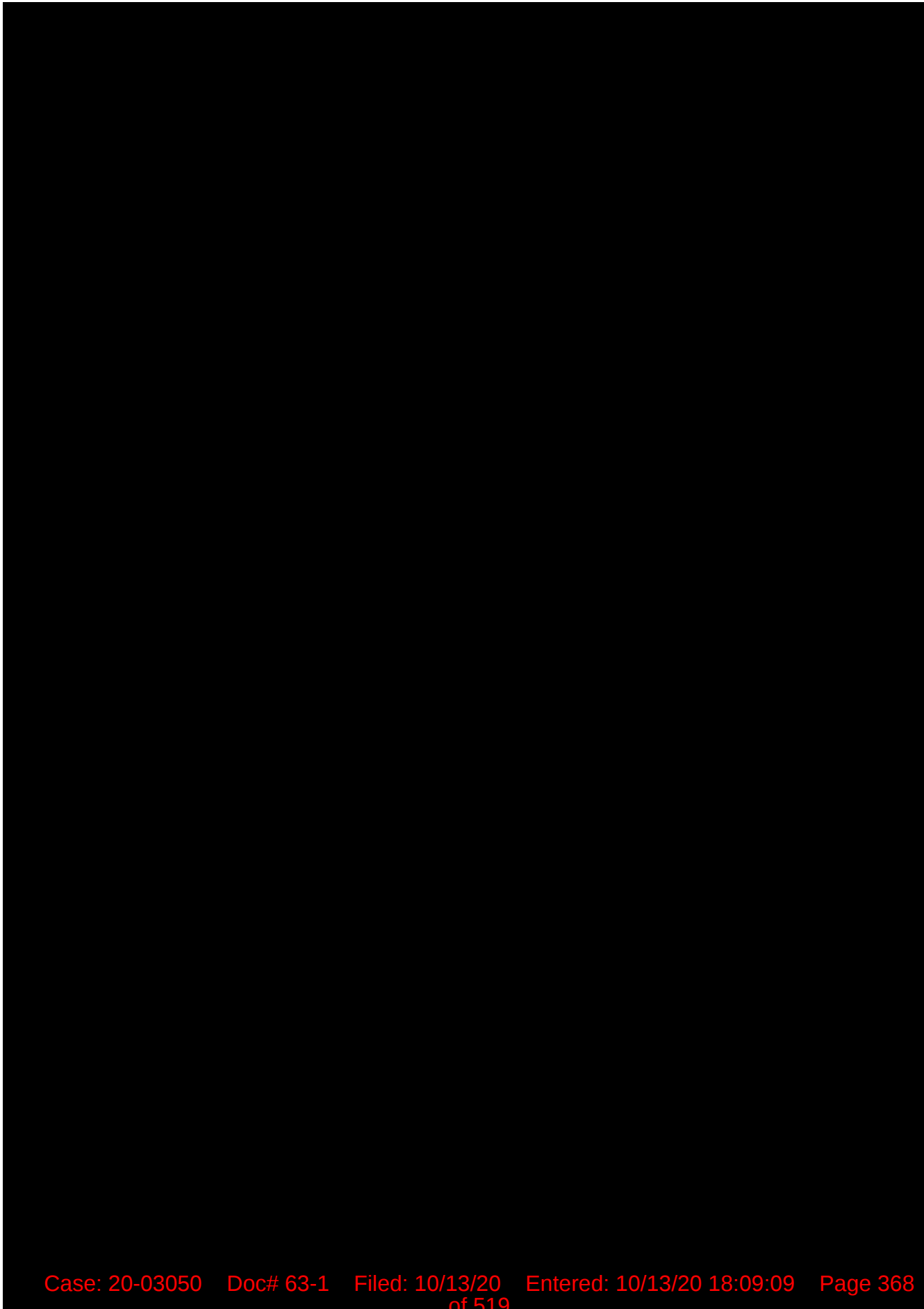


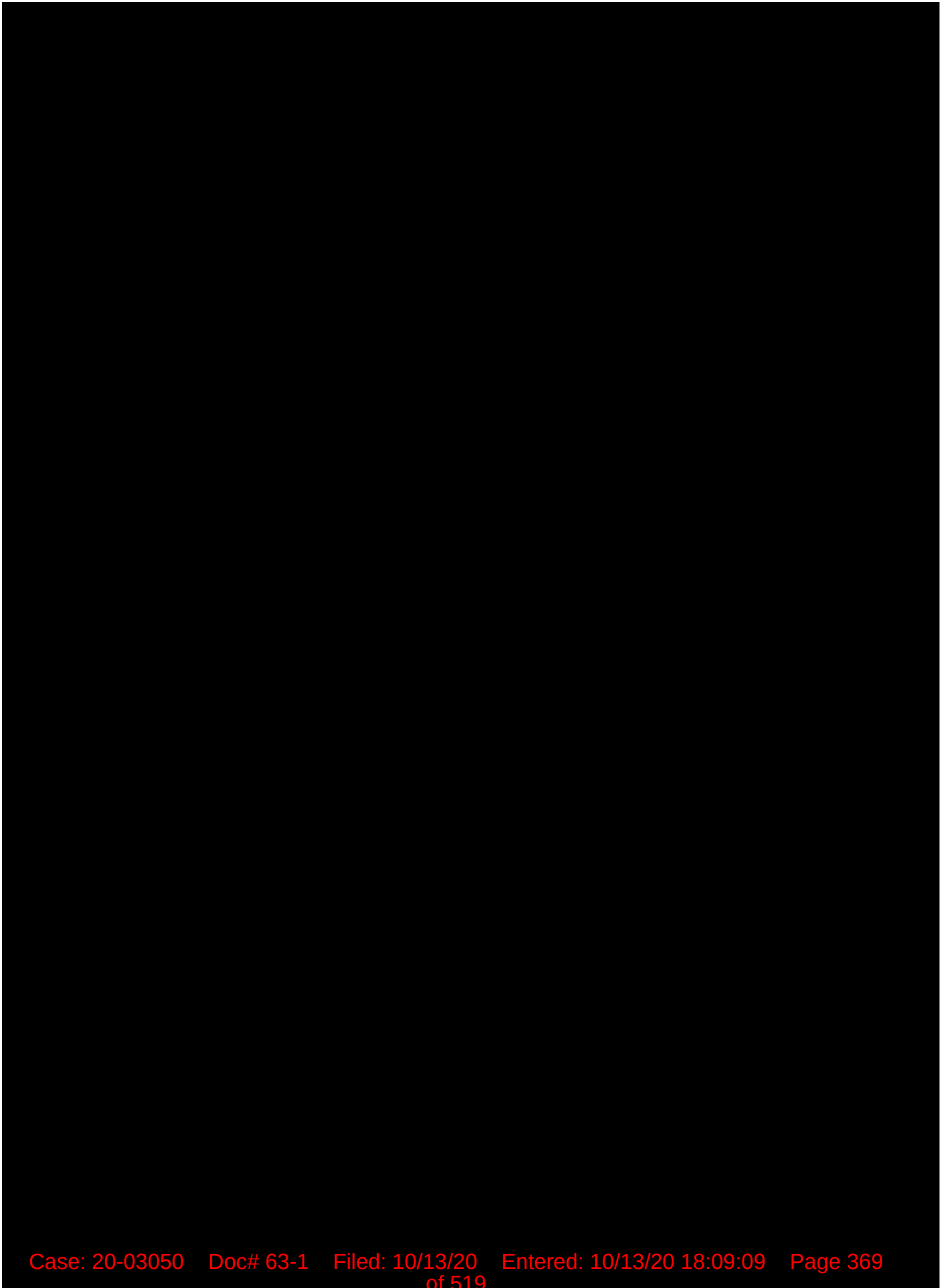


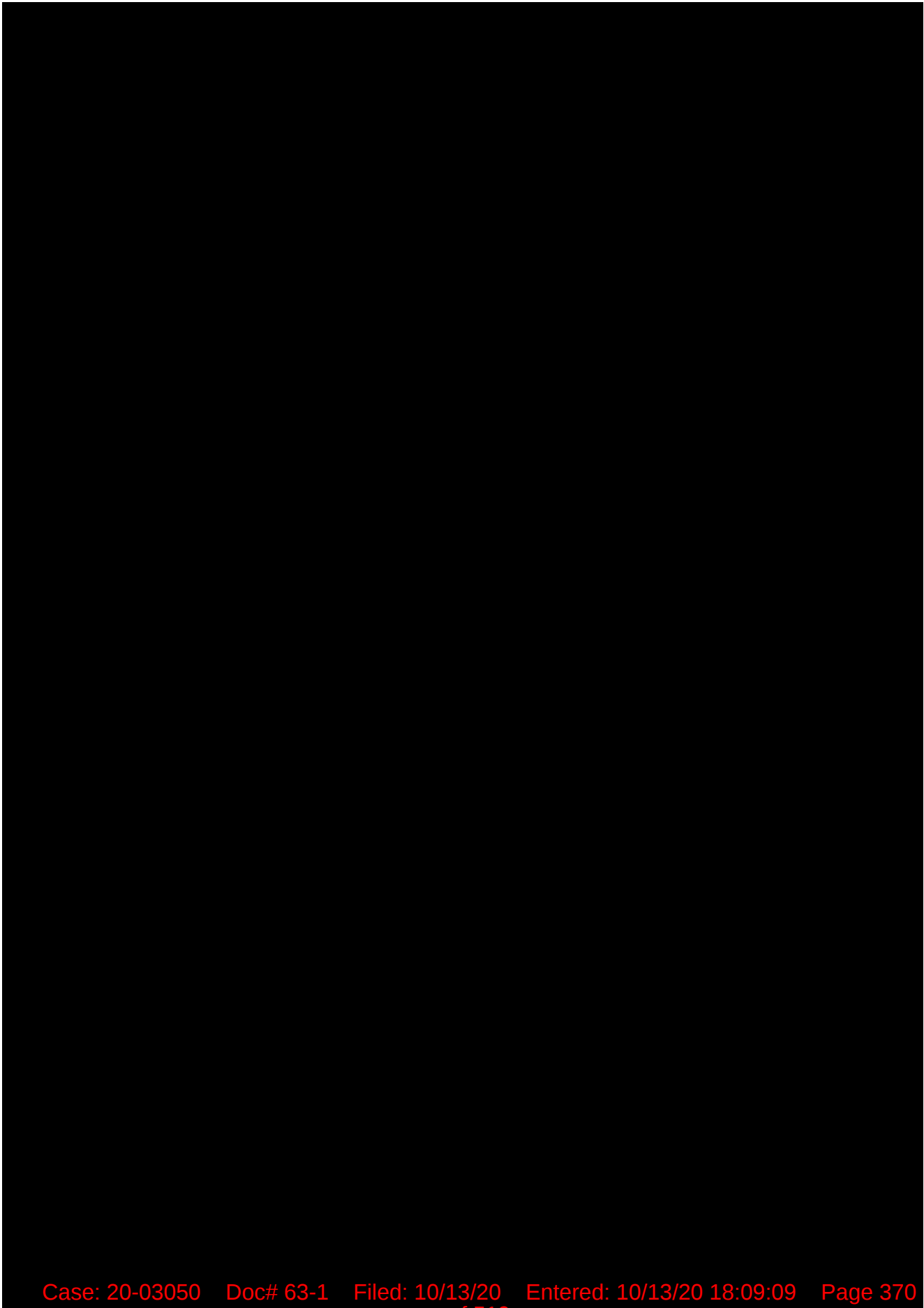




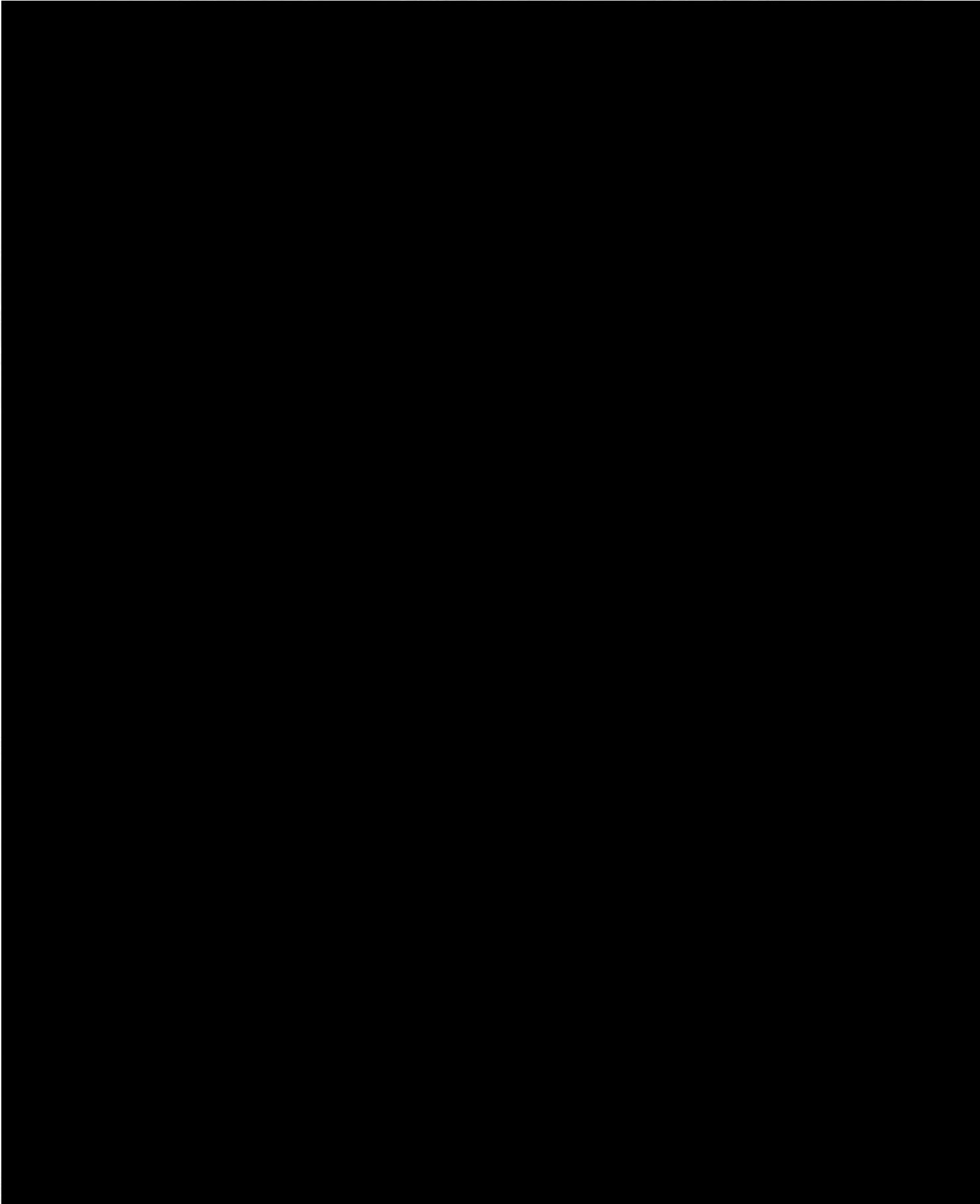


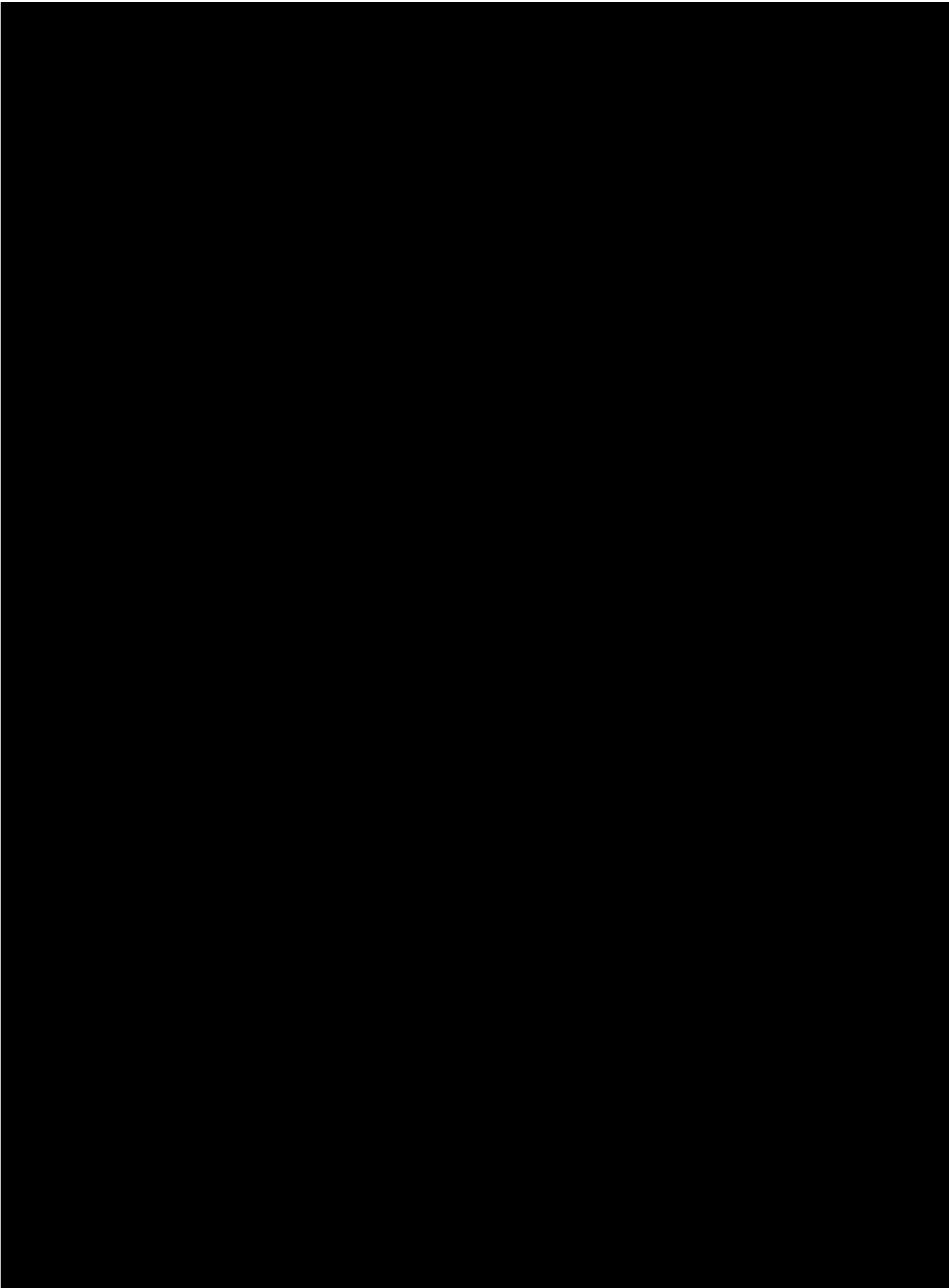


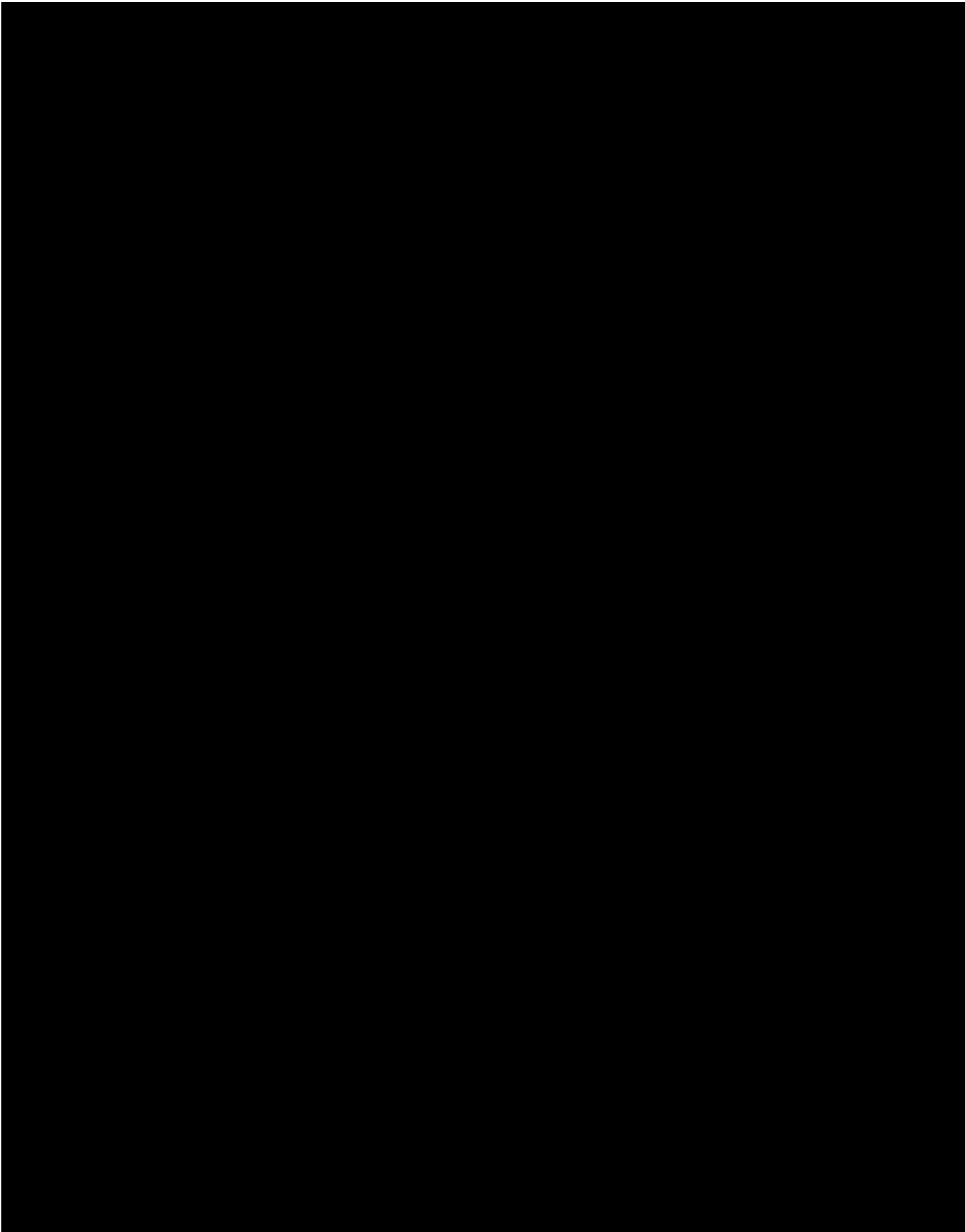


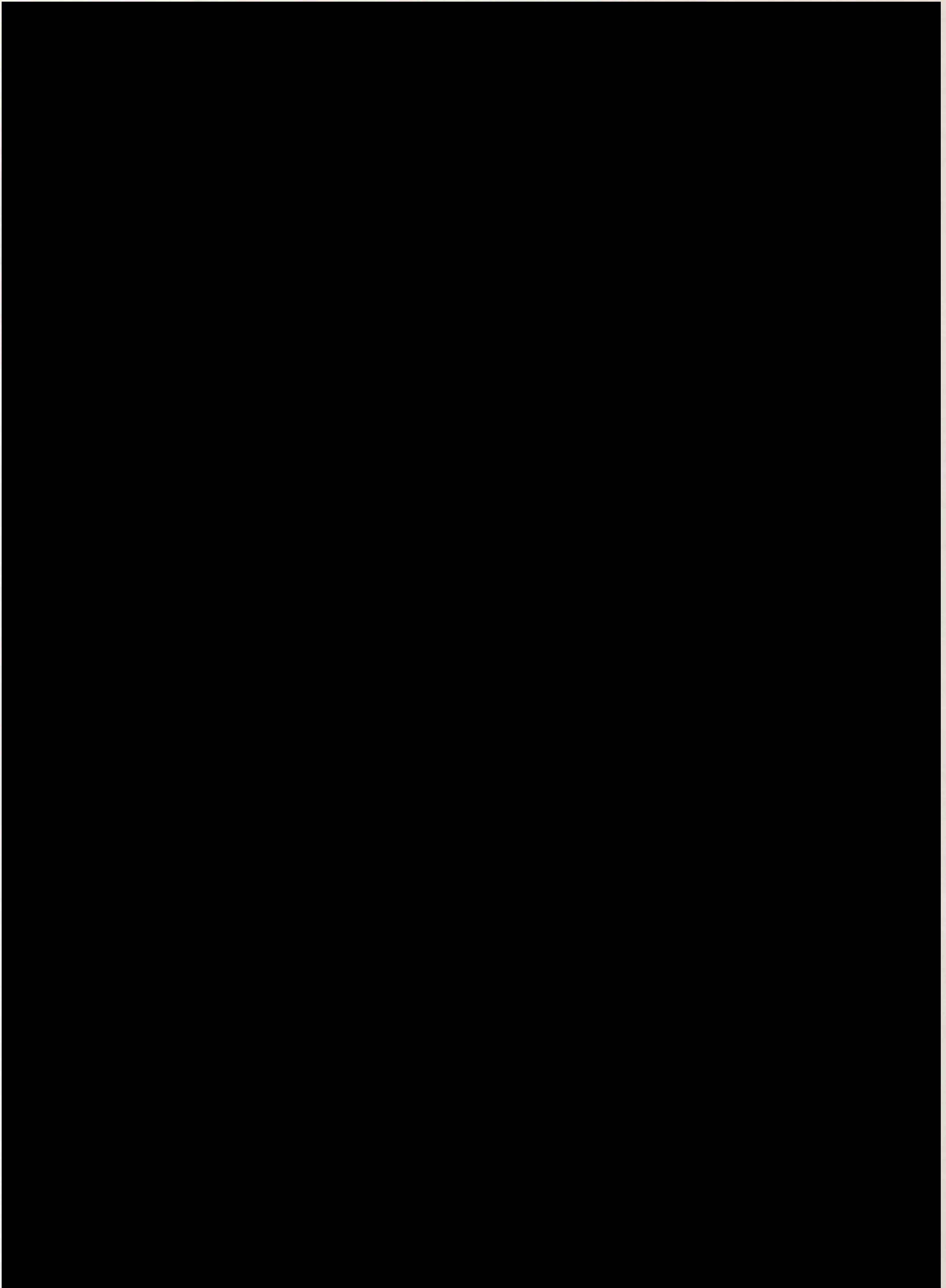


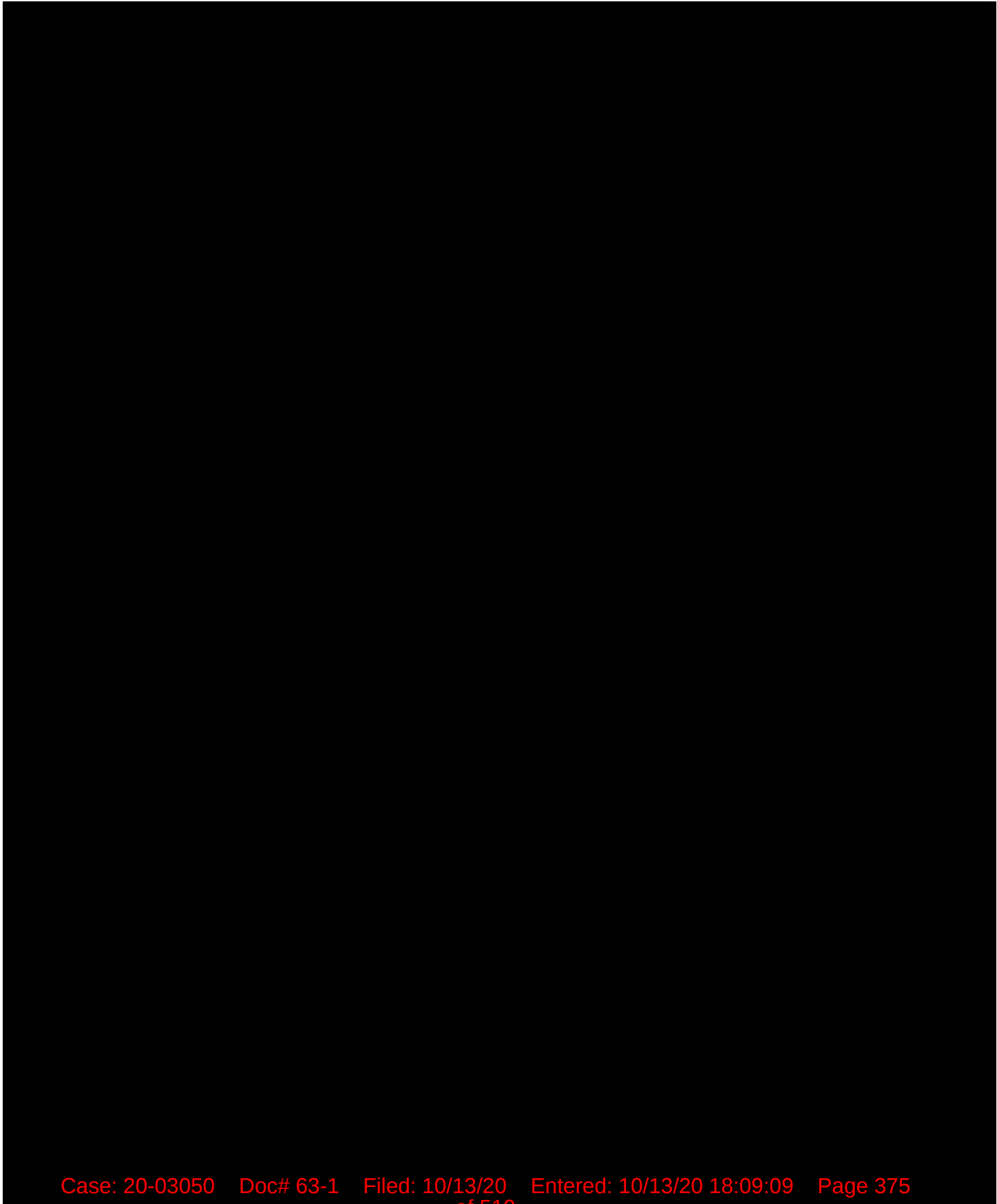






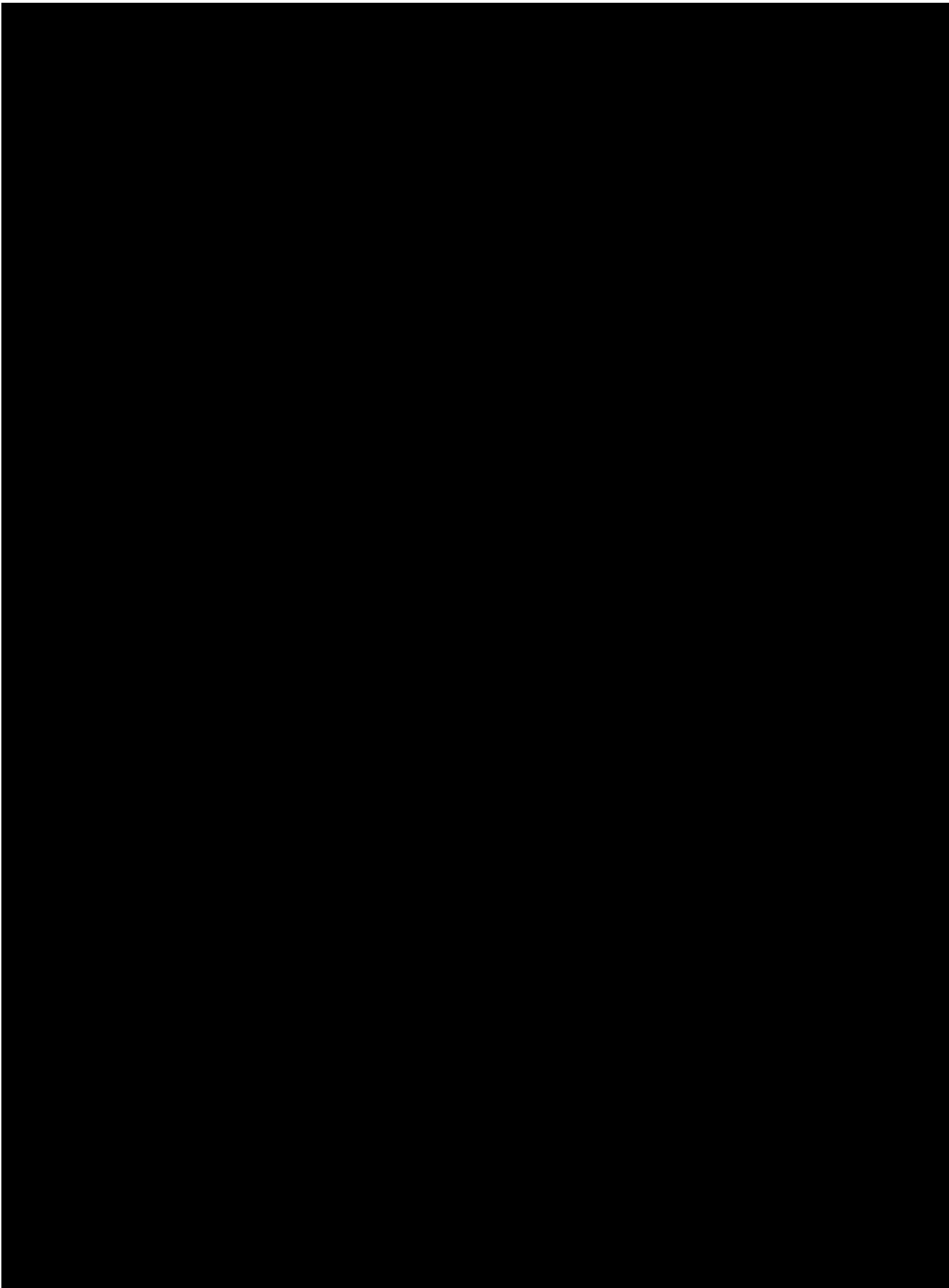


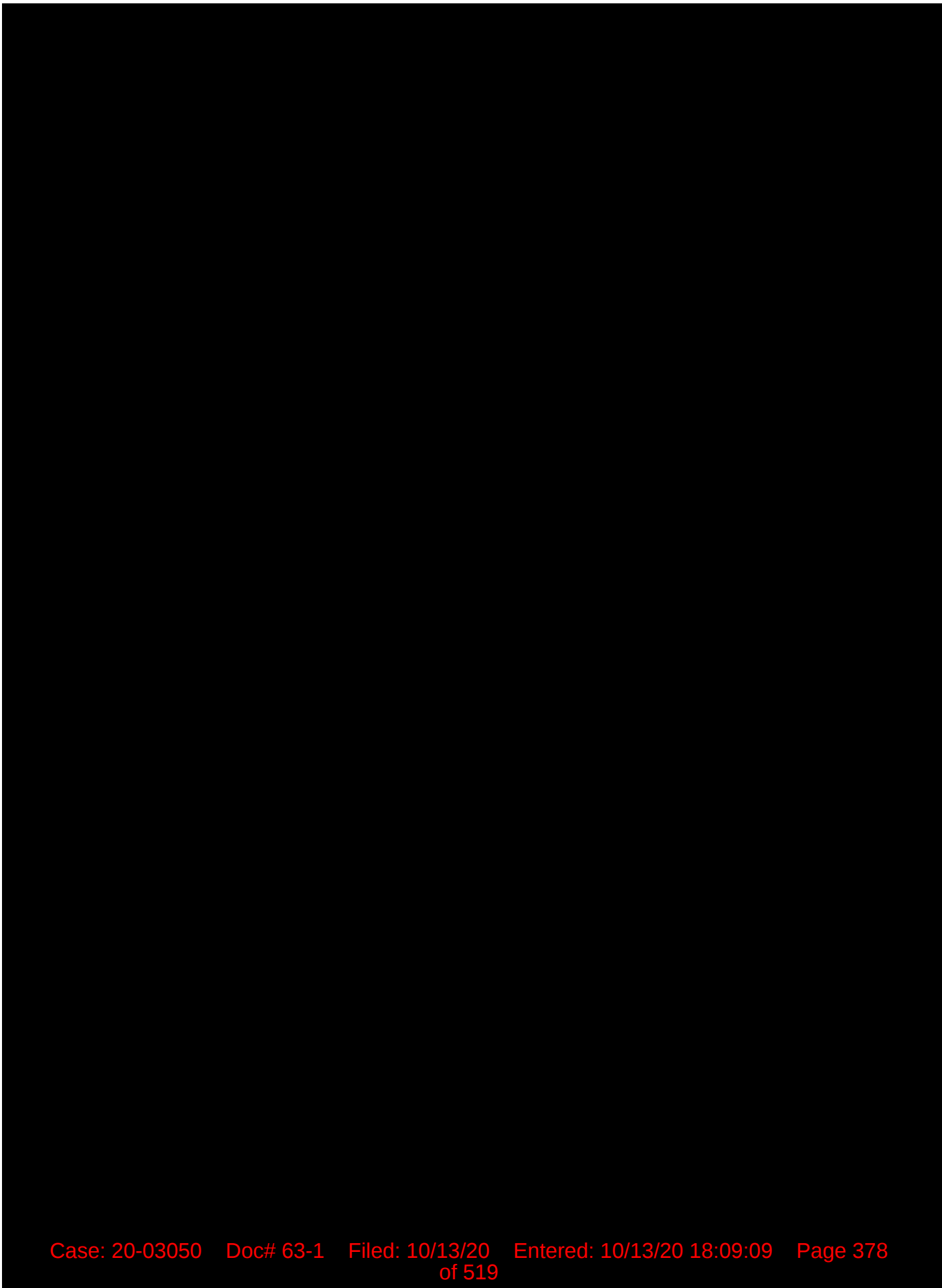




REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

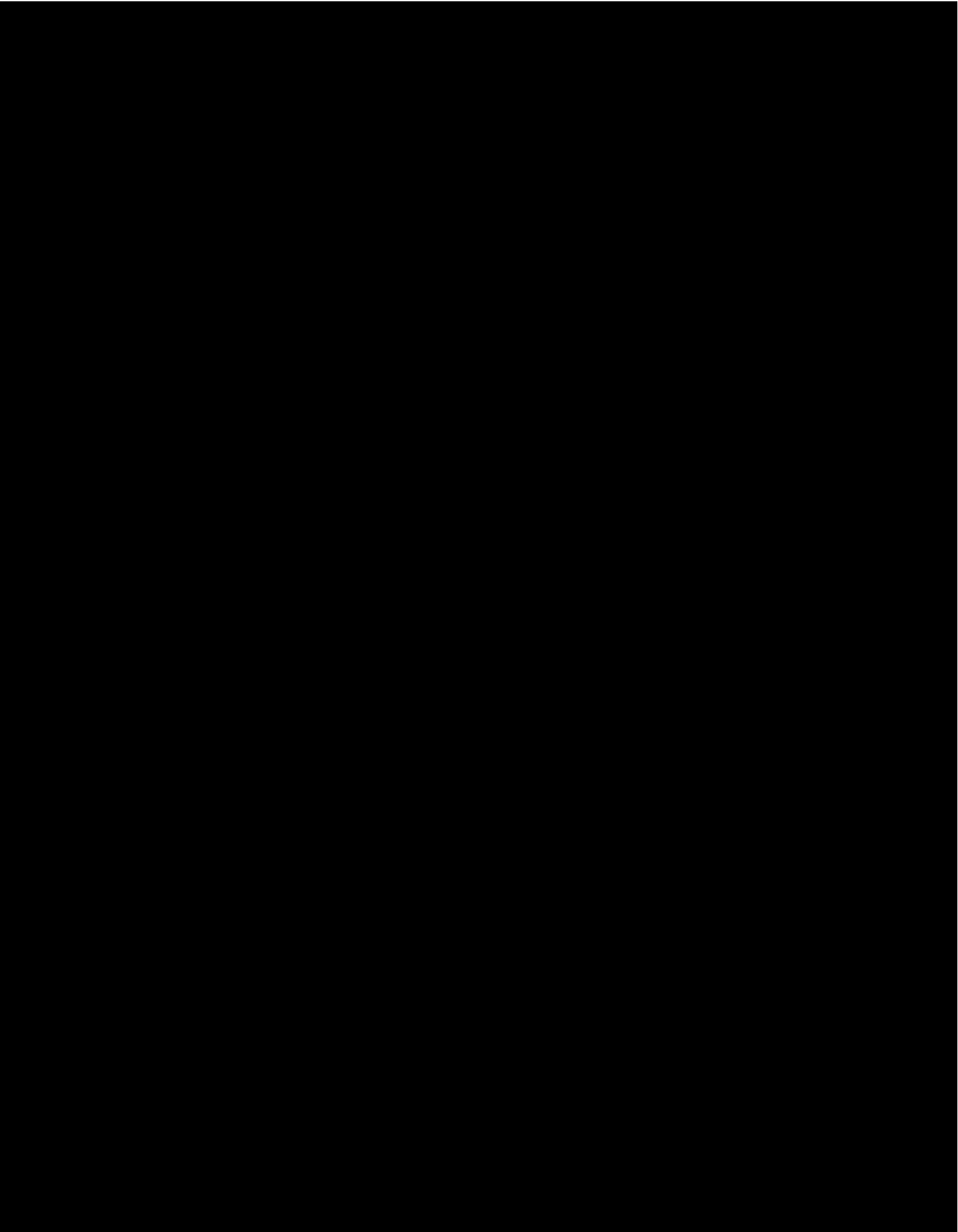
# **EXHIBIT 5**











VERSION OF DOCUMENT SOUGHT TO BE SEALED

# **EXHIBIT 6**

~~SEALED BY ORDER  
OF COURT~~

# United States District Court

FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN JOSE

UNITED STATES OF AMERICA,

V.


ANTHONY SCOTT LEVANDOWSKI,

**CR 19 00377**

DEFENDANT(S).

## INDICTMENT

18 U.S.C. § 1832(a)(1), (2), (3) & (4) – Theft and Attempted Theft of Trade Secrets;  
18 U.S.C. §§ 1843 and 2323 – Criminal Forfeiture.

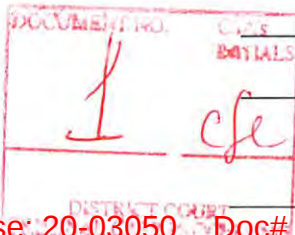
  
A true bill.

Foreman

Filed in open court this 15 day of August 2019

Nathaniel Coors  
Clerk  
U.S. District Court

Bail, \$ no bail arrest warrant



**FILED**

**AUG 15 2019**

SUSAN Y. SOONG  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

**LHK  
SVK**

~~SEALED BY ORDER  
OF COURT~~

FILED

AUG 15 2019

1 DAVID L. ANDERSON (CABN 149604)  
 2 United States Attorney

SUSAN Y. SOONG  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 ANTHONY SCOTT LEVANDOWSKI,

15 Defendant.

CR 19 00377

Case No.

LHK  
SVK

) VIOLATIONS: Title 18, United States Code,  
 ) Sections 1832(a)(1), (2), (3) & (4) – Theft and  
 ) Attempted Theft of Trade Secrets; Title 18, United  
 ) States Code, Sections 1843 and 2323 – Criminal  
 ) Forfeiture.

) San Jose Venue  
 )  
 )

18 INDICTMENT

19 The Grand Jury charges:

20 Introductory Allegations

21 1. In or about 2009, Google Inc. (“Google”) began a self-driving car project known within  
 22 the company as Project Chauffeur. Google employees working on Project Chauffeur designed and  
 23 developed both the hardware and software necessary for fully autonomous vehicles. Self-driving  
 24 vehicles, and many of their component parts, were intended for use in interstate commerce. At all times  
 25 relevant to this Indictment, Google owned all of the Project Chauffeur intellectual property, including  
 26 but not limited to, the trade secrets at issue. Google was headquartered, and Project Chauffeur  
 27 maintained offices in, Mountain View, California.

28 2. In December 2016, after the events outlined in this Indictment, Project Chauffeur became

Waymo, a stand-alone company with over 600 employees. Waymo operated alongside Google and other technology companies under the umbrella of Alphabet Inc.

3. Uber Technologies, Inc. (“Uber”) began as a ridesharing app in or about 2009. By 2015, Uber had expanded its business to include food delivery and other logistics. That same year, Uber began investing in autonomous vehicle technologies. At all times relevant to this Indictment, Uber was headquartered in San Francisco, California.

4. Anthony LEVANDOWSKI joined Google as an engineer in or about April 2007. He was one of the founding members of Project Chauffeur. In or about 2007, 2009, and 2012, LEVANDOWSKI signed employment agreements with Google. Each employment agreement contained, among other provisions, a Confidential Information paragraph, which obligated LEVANDOWSKI to hold Google’s Confidential Information, including trade secrets, in confidence. On or about January 27, 2016, LEVANDOWSKI resigned from Google without notice. At the time of his departure, LEVANDOWSKI was in charge of the Light Detection and Ranging (LiDAR) engineering team within Project Chauffeur.

5. Without disclosing it to Google, in or about the spring of 2012, LEVANDOWSKI participated in the formation of a LiDAR company later incorporated as Odin Wave LLC (“Odin Wave”). Odin Wave had a handful of employees and offices in Berkeley, California. The company worked to develop a high-accuracy mapping LiDAR sensor. In or about late 2013, Odin Wave began doing business as Tyto LiDAR LLC (“Tyto”) and moved to offices in San Leandro, California. Paperwork formalizing the name change was filed in or about February 2014. By 2015, Tyto was attempting to market its LiDAR technology to self-driving companies, including Uber.

6. No later than in or about September 2015, LEVANDOWSKI decided to leave Google and form a new self-driving company. LEVANDOWSKI’s new company was initially called 280 Systems, Inc. but later changed its name to Ottomotto Inc. (“Ottomotto”). In or about fall 2015, LEVANDOWSKI began having discussions with executives at Uber regarding Uber potentially making an investment in or acquiring Ottomotto. Those negotiations intensified in December 2015 and January 2016, with Uber and Ottomotto signing a term sheet in February 2016.

7. On or about April 11, 2016, Uber’s Board of Directors approved the Uber/Ottomotto



1 transaction. Shortly thereafter, Ottomotto acquired Tyto. Uber's acquisition of Ottomotto closed in  
2 August 2016. (By the time of the acquisition, Ottomotto had been re-incorporated as Ottomotto LLC  
3 and Otto Trucking LLC.)

#### 4 The Technology

5 8. The technology and information at issue involved the research, development, and  
6 production of LiDAR technology for self-driving vehicles. A LiDAR sensor is typically mounted on the  
7 exterior of a self-driving vehicle. It works by sending out an array of high-power, pulsing lasers into the  
8 surrounding environment. The laser beams bounce off surrounding objects and return to the sensor,  
9 which measures the qualities of the return signals to determine the size, shape, and distance of  
10 surrounding objects. Self-driving companies have used LiDAR for critical functions, including but not  
11 limited to, mapping and perception. For mapping, LiDAR can be used to create a three-dimensional  
12 map of the static environment in which the vehicle will operate. Regarding perception, LiDAR  
13 dynamically detects what is happening around a vehicle as it travels through the previously mapped  
14 environment. In real time, it provides information to the vehicle about other vehicles, pedestrians, and  
15 obstacles on the road.

16 9. Through years of research and testing, and millions of dollars in investment, Project  
17 Chauffeur developed its own customized LiDAR systems. Those custom systems were used for both  
18 mapping and perception and consisted of thousands of individual hardware and software components.  
19 The success of the LiDAR effort was critical to the overall success of Project Chauffeur. Moreover,  
20 having custom LiDAR, as opposed to commercially available LiDAR, was a key differentiator between  
21 Project Chauffeur and its competitors in the 2015 and 2016 timeframe.

22 10. The Google employees working on Project Chauffeur used secure, password-protected  
23 repositories to store their files, with access available to employees in the course of their job  
24 responsibilities, as authenticated by valid user credentials. Project Chauffeur's repositories included the  
25 following:

- 26 a. SVN: Project Chauffeur engineers used computer-assisted design (CAD) software to  
27 design hardware, including custom LiDAR. CAD files, including circuit board drawings and  
28 schematics, were housed on a subversion, or SVN, server hosted on Google's network. To

1 access SVN, Project Chauffeur employees had to email the SVN administrator to request a  
2 username and password.

3 b. Google Drive: The Project Chauffeur team used Google's corporate drive as a repository  
4 for non-CAD files, such as presentations and spreadsheets. Only Google employees could  
5 access this Drive, after authentication of their credentials on the Google network.

6 11. In the months before his departure from Google, LEVANDOWSKI downloaded  
7 thousands of Project Chauffeur files. On or about December 11, 2015, he downloaded approximately  
8 14,000 files from SVN. These files contained critical engineering information about the hardware used  
9 on Project Chauffeur self-driving vehicles, including schematics for the printed circuit boards used in  
10 various custom LiDAR products. On or about December 14, 2015, LEVANDOWSKI transferred the  
11 SVN files from his Google laptop to his personal laptop. Additionally, between in or about October  
12 2015 and January 2016, LEVANDOWSKI downloaded, directly to his personal laptop, at least 20 files  
13 from the Google Drive, including instructions for calibrating and tuning Google's custom LiDAR and an  
14 internal tracking document setting forth, among other things, technical goals for each team within  
15 Project Chauffeur.

16  
17 COUNTS ONE THROUGH THIRTY-THREE: (18 U.S.C. §§ 1832(a)(1), (2), (3) & (4) – Theft and  
18 Attempted Theft of Trade Secrets)

19 12. The allegations contained in Paragraphs 1 through 11 are realleged and incorporated as if  
20 fully set forth herein.

21 13. On or about the dates set forth in the separate counts below, in the Northern District of  
22 California and elsewhere, the defendant,

23 ANTHONY SCOTT LEVANDOWSKI,

24 intending to convert a trade secret that was related to a product and service used in and intended for use  
25 in interstate and foreign commerce to the economic benefit of anyone other than the owner of that trade  
26 secret, and knowing and intending that the offense would injure the owner of that trade secret, as  
27 specifically alleged in each of Counts One through Thirty-three below:

28 a. knowingly stole, and without authorization appropriated, took, carried away, concealed,



and by fraud, artifice, and deception obtained trade secrets belonging to Google, and attempted to do so;

b. knowingly and without authorization copied, duplicated, sketched, drew, downloaded, uploaded, altered, photocopied, replicated, transmitted, delivered, sent, communicated, and conveyed trade secrets belonging to Google and attempted to do so; and

c. knowingly and without authorization received, bought, and possessed trade secrets belonging to Google, and attempted to do so, knowing the same to have been stolen and appropriated, obtained, and converted without authorization:

Count	Date	File Name	Description	Source
One	12-11-15	projects/Laser/GBr/gbr-laser-module/3-1-0/gbr-laser-moduleA-3-1-0/laserA.PcbDoc	Transmit Block Configuration	SVN
Two	12-11-15	projects/Laser/GBr/gbr-laser-module/3-1-0/gbr-laser-moduleB-3-1-0/laserB.PcbDoc	Transmit Block Configuration	SVN
Three	12-11-15	projects/Laser/GBr/gbr-laser-module/3-1-0/gbr-laser-moduleC-3-1-0/laserC.PcbDoc	Transmit Block Configuration	SVN
Four	12-11-15	projects/Laser/GBr/gbr-laser-module/3-1-0/gbr-laser-moduleD-3-1-0/laserD.PcbDoc	Transmit Block Configuration	SVN
Five	12-11-15	projects/Laser/GBr/gbr-laser-module/3-1-0/gbr-laser-moduleE-3-1-0/laserE.PcbDoc	Transmit Block Configuration	SVN
Six	12-11-15	projects/Laser/GBr/gbr-laser-module/3-1-0/gbr-laser-moduleF-3-1-0/LsrBrdF.PcbDoc	Transmit Block Configuration	SVN
Seven	12-11-15	projects/Laser/GBr/gbr-motherboard/gbr-motherboard_3-0-0/receiver.SchDoc	Receiver Schematic and Structure	SVN
Eight	12-11-15	projects/Laser/GBr/gbr-motherboard/gbr-motherboard_3-0-0/DAC_rcvr.SchDoc	Receiver DAC Circuit	SVN
Nine	12-11-15	projects/Laser/GBr/gbr-motherboard/gbr-motherboard_3-0-0/flop.SchDoc	Receiver Flip-flop Circuit	SVN
Ten	12-11-15	projects/Laser/GBr/gbr-motor/gbr-motor_2-5-0/gbr-motor.PcbDoc	Motor Design	SVN
Eleven	12-11-15	projects/Laser/PBr/pbr-motor-pcb/pbr-motor-pcb_1-1-4/pbr-motor.PcbDoc	Motor Design	SVN

Twelve	12-11-15	projects/Laser/PBr/pbr-flex-clock/pbr-flex-clock_1-4-1/pbr-flex-clock.PcbDoc	Use and Structure of a Flex PCB	SVN
Thirteen	12-11-15	projects/Laser/PBr/pbr-receiver/pbr-receiver_1-4-1/apd.SchDoc	APD Circuit Design	SVN
Fourteen	12-11-15	projects/Laser/PBr/pbr-motherboard/pbr-motherboard-1-14-0/receiver.SchDoc	Receiver Schematic and Structure	SVN
Fifteen	12-11-15	projects/Laser/PBr/pbr-motherboard/pbr-motherboard-1-14-0/DAC_rcvr.SchDoc	Receiver DAC Circuit	SVN
Sixteen	12-11-15	projects/Laser/PBr/pbr-motherboard/pbr-motherboard-1-14-0/flop.SchDoc	Receiver Flip-flop Circuit	SVN
Seventeen	12-11-15	projects/Laser/PBr/pbr-motherboard/pbr-motherboard-1-14-0/APD_BIAS.SchDoc	APD Circuit Design	SVN
Eighteen	12-11-15	projects/Laser/KBr/kbr-motherboard/kbr-motherboard-1-5-0/pulse_shaper.SchDoc	Pulse Control Circuit	SVN
Nineteen	12-11-15	projects/Laser/TBr/tbr-motherboard/tbr-motherboard_4-2-0/receiver.SchDoc	Receiver Schematic and Structure	SVN
Twenty	12-11-15	projects/Laser/TBr/tbr-motherboard/tbr-motherboard_4-2-0/DAC_rcvr.SchDoc	Receiver DAC Circuit	SVN
Twenty-one	12-11-15	projects/Laser/TBr/tbr-motherboard/tbr-motherboard_4-2-0/flop.SchDoc	Flip-flop Circuit	SVN
Twenty-two	12-11-15	projects/Laser/YBr/ybr-pulser/ybr-pulser_1-1-0/driver.SchDoc	Laser Pulse Driver Design	SVN
Twenty-three	12-11-15	projects/Laser/YBr/ybr-rx-module/ybr-rx-module_1-0-0/ybr-rx_module.SchDoc	Receiver Module Design	SVN
Twenty-four	12-11-15	projects/Laser/BBr/bbr-motherboard/bbr-motherboard_1-0-0/driver.SchDoc	Laser Pulse Driver Design	SVN
Twenty-five	12-11-15	projects/Laser/CBr/laser_module_test/laser_module_test_1-0-2B/laser.SchDoc	Laser Pulser Circuit Schematic	SVN
Twenty-six	12-11-15	projects/Laser/CBr/laser_module_test/spice_sim/laser_module_1-0-1.asc	Simulation Models for Laser Pulser Circuit	SVN
Twenty-seven	11-19-15	Google Fiber Laser for Lidar	Presentation re Project Chauffeur's Unique Fiber Laser Design	Google Drive

Twenty-eight	12-18-15	Thermal Rotary Coupling	Presentation re LiDAR Engineering Issue	Google Drive
Twenty-nine	01-04-16	PBR Intensity Calibration	Instructions for how to calibrate long-range LiDAR intrinsic properties once it is installed on vehicle	Google Drive
Thirty	01-04-16	Pbr Extrinsic Calibration	Instructions for how to calibrate long-range LiDAR to function properly with mid-range LiDAR on vehicle	Google Drive
Thirty-one	01-04-16	Tx and Rx tuning Instructions	Instructions for checking that the laser in the long-range LiDAR is positioned correctly and meets certain criteria	Google Drive
Thirty-two	01-04-16	TBR TESTING STATION	Manual for various quality control tests and assembly steps to be performed on short-range LiDAR during manufacturing	Google Drive
Thirty-three	01-11-16	Chauffeur TL weekly updates - Q4 2015	Internal Project Chauffeur Tracking and Planning Document	Google Drive

Each in violation of Title 18, United States Code, Sections 1832(a)(1), (2), (3) & (4).

**FORFEITURE ALLEGATION:** (18 U.S.C. §§ 1834 and 2323 – Proceeds and Property Involved in Theft of Trade Secrets)

14. The allegations contained in Counts One through Thirty-three of this Indictment are hereby realleged and incorporated as if fully set forth here. Upon conviction of any of those offenses, the defendant,

ANTHONY SCOTT LEVANDOWSKI,

shall forfeit to the United States of America, pursuant to Title 18, United States Code, Sections 1834 and 2323, any property used, or intended to be used, in any manner or part to commit or facilitate the

1 commission of the offenses, and any property constituting or derived from any proceeds obtained  
2 directly or indirectly as a result of the commission of the offenses.

3 15. If any of the property described above, as a result of any act or omission of the defendant:

- 4 a. cannot be located upon the exercise of due diligence;  
5 b. has been transferred or sold to, or deposited with, a third party;  
6 c. has been placed beyond the jurisdiction of the court;  
7 d. has been substantially diminished in value; or  
8 e. has been commingled with other property which cannot be divided without  
9 difficulty,

10 the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21,  
11 United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 2323(b).


12 All pursuant to Title 18, United States Code, Sections 1834 and 2323.

13  
14 DATED: 8-15-19

A TRUE BILL.

15  
16   
17 FOREPERSON

18 DAVID L. ANDERSON  
19 United States Attorney

20   
21 KATHERINE L. WAWRZYNIAK  
22 ANDREW F. DAWSON  
23 AMIE D. ROONEY  
24 Assistant United States Attorneys  
25  
26  
27  
28



**SEALED BY ORDER****DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT  
☐ SUPERSEDING**OFFENSE CHARGED**18 U.S.C. § 1832(a)(1), (2), (3) & (4) - Theft and Attempted  
Theft of Trade Secrets; and  
18 U.S.C. §§ 1843 and 2323 - Criminal Forfeiture.☐ Petty  
☐ Minor  
☐ Misdemeanor  
☒ FelonyPENALTY: Maximum Penalties (per Count):  
10 years imprisonment;  
\$250,000 fine, or twice the gross gain/loss;  
\$100 special assessment; and  
3 years' supervised release.

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

**DEFENDANT - U.S.**

Anthony Scott Levandowski

DISTRICT COURT NUMBER

**CR 19 00377****LHK****SVK****DEFENDANT****IS NOT IN CUSTODY**

Has not been arrested, pending outcome this proceeding.

1) ☒ If not detained give date any prior  
summons was served on above charges2) ☐ Is a Fugitive3) ☐ Is on Bail or Release from (show District)**FILED****IS IN CUSTODY**

AUG 15 2019

4) ☐ On this charge5) ☐ On another conviction6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE☐ Federal ☐ StateHas detainer ☐ Yes  
been filed? ☐ NoIf "Yes"  
give date  
filedDATE OF  
ARREST

Month/Day/Year

Or... if Arresting Agency &amp; Warrant were not

DATE TRANSFERRED  
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted**PROCEEDING**

Name of Complainant Agency, or Person (&amp; Title, if any)

Federal Bureau of Investigation

☐ person is awaiting trial in another Federal or State Court,  
give name of court☐ this person/proceeding is transferred from another district  
per (circle one) FRCrp 20, 21, or 40. Show District☐ this is a re prosecution of  
charges previously dismissed  
which were dismissed on motion  
of:☐ U.S. ATTORNEY ☐ DEFENSESHOW  
DOCKET NO.☐ this prosecution relates to a  
pending case involving this same  
defendantMAGISTRATE  
CASE NO.☐ prior proceedings or appearance(s)  
before U.S. Magistrate regarding this  
defendant were recorded under

Name and Office of Person

Furnishing Information on this form DAVID L. ANDERSON

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned) Katherine L. Wawrzyniak

**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**☐ SUMMONS ☐ NO PROCESS\* ☒ WARRANT

Bail Amount: No bail

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

\* Where defendant previously apprehended on complaint, no new summons or  
warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

**SEALED BY ORDER  
OF COURT**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**CRIMINAL COVER SHEET**

**Instructions:** Effective November 1, 2016, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case.

CASE NAME:

USA v. Anthony Scott Levandowski

CASE NUMBER:

**CR 19 00377**

**LHK**

Is This Case Under Seal?

Yes ☒ No

Total Number of Defendants:

1 ☒ 2-7

8 or more

**SVK**

Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?

Yes

No ☒

Venue (Per Crim. L.R. 18-1):

SF

OAK

SJ ☒

Is this a potential high-cost case?

Yes

No ☒

Is any defendant charged with a death-penalty-eligible crime?

Yes

No ☒

Is this a RICO Act gang case?

Yes

No ☒

Assigned AUSA

(Lead Attorney): Katherine L. Wawrzyniak

Date Submitted: 08/15/2019

Comments:

Government will be filing a notice of related case to Waymo v. Uber, et al., 17-cv-939 WHA.

VERSION OF DOCUMENT SOUGHT TO BE SEALED

# EXHIBIT 7



DAVID L. ANDERSON (CABN 149604)  
United States Attorney

HALLIE HOFFMAN (CABN 210020)  
Chief, Criminal Division

AMIE D. ROONEY (CABN 215324)  
KATHERINE L. WAWRZYNIAK (CABN 252751)  
ANDREW F. DAWSON (CABN 264421)  
Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7200  
FAX: (415) 436-7234  
Amie.Rooney@usdoj.gov  
Katherine.Wawrzyniak@usdoj.gov  
Andrew.Dawson@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	NO. CR 19-377 WHA
Plaintiff,	)	STIPULATED MOTION TO SET
v.	)	CONSOLIDATED HEARING FOR CHANGE OF
	)	PLEA AND SENTENCING
ANTHONY SCOTT LEVANDOWSKI,	)	
Defendant.	)	

The parties in this matter have reached an agreement to resolve this case. An executed plea agreement, attached hereto as Exhibit A, reflects the parties' agreement. Pursuant to General Order 72, the parties agree and hereby move that the guilty plea and sentencing should be consolidated for a date after the presentence report has been prepared, and that this matter should be referred to the Probation Office. The parties further request that, in light of the enclosed plea agreement, the Court vacate any

//

STIPULATED MOTION RE CHANGE OF PLEA 1  
CR 19-377 WHA



1 pending discovery or motion deadlines that would otherwise occur in the interim.

2  
3 DAVID L. ANDERSON  
United States Attorney

4  
5 Dated: March 19, 2020

6  
7 /s/ Amie D. Rooney  
AMIE D. ROONEY  
KATHERINE L. WAWRZYNIAK  
ANDREW F. DAWSON  
Assistant United States Attorneys

8  
9 Dated: March 19, 2020

10  
11 /s/ Miles Ehrlich  
MILES EHRLICH  
ISMAIL RAMSEY  
Attorneys for Defendant

12  
13 **[PROPOSED] ORDER**

14 The parties having stipulated and good cause appearing therefor, it is hereby ORDERED that this  
15 matter be set for a consolidated change of plea and sentencing hearing on \_\_\_\_\_ at 2:00pm. It  
16 is further ORDERED that this matter be referred to the Probation Office for preparation of a presentence  
17 report. Any pending discovery or motion deadlines occurring in the interim are hereby VACATED.

18  
19 Dated: March \_\_, 2020

20  
21  
22 HON. WILLIAM ALSUP  
United States District Judge

## **EXHIBIT A**

1 DAVID L. ANDERSON (CABN 149604)  
United States Attorney

2 HALLIE HOFFMAN (CABN 210020)  
3 Chief, Criminal Division

4 AMIE D. ROONEY (CABN 215324)  
KATHERINE L. WAWRZYNIAK (CABN 252751)  
5 ANDREW F. DAWSON (CABN 264421)  
Assistant United States Attorneys

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8 FAX: (415) 436-7234  
Amie.Rooney@usdoj.gov  
9 Katherine.Wawrzyniak@usdoj.gov  
Andrew.Dawson@usdoj.gov

10  
11 Attorneys for United States of America

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15  
16 UNITED STATES OF AMERICA, ) NO. CR 19-377 WHA  
17 Plaintiff, ) PLEA AGREEMENT  
18 v. )  
19 ANTHONY SCOTT LEVANDOWSKI, )  
20 Defendant. )  
21

22  
23 I, Anthony Scott Levandowski, and the United States Attorney's Office for the Northern District  
24 of California (hereafter "the government") enter into this written Plea Agreement (the "Agreement")  
25 pursuant to Rule 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

26 The Defendant's Promises

27 1. I agree to plead guilty to Count Thirty-Three of the captioned Indictment, charging me  
28

PLEA AGREEMENT  
CR 19-377 WHA

1

v. 11/21/2019



1 with Theft and Attempted Theft of Trade Secrets in violation of 18 U.S.C. § 1832(a)(1), (2), (3) & (4). I  
 2 agree that the elements of the offense are as follows: (1) I intended to convert a trade secret to the  
 3 economic benefit of anyone other than the owner thereof; (2) The trade secret is related to a product  
 4 used in or intended for use in interstate or foreign commerce; (3) I intended or knew that the offense  
 5 would injure any owner of that trade secret; and (4) I stole, or without authorization, appropriated, took,  
 6 carried away, or concealed such information.

7 I agree that the maximum penalties are as follows:

- |    |    |                                 |            |
|----|----|---------------------------------|------------|
| 8  | a. | Maximum prison term             | 10 years   |
| 9  | b. | Maximum fine                    | \$ 250,000 |
| 10 | c. | Restitution                     |            |
| 11 | d. | Maximum supervised release term | 3 years    |
| 12 | e. | Mandatory special assessment    | \$100      |
| 13 | f. | Forfeiture                      |            |

14 2. I agree that I am guilty of the offense to which I am pleading guilty, and I agree that the  
 15 following facts are true: In April 2007, I joined Google Inc. ("Google") as part of the VuTool team,  
 16 which Google acquired to build out Google Street View. In or about 2009, I co-founded Google's  
 17 "Project Chauffeur," which was the name given to Google's self-driving car program. I worked in  
 18 Google's self-driving car program for approximately seven years. In the course of my employment, I  
 19 was aware that my employment agreement obligated me to keep Google's valuable non-public  
 20 information confidential, and I understood that non-public information related to Project Chauffeur was  
 21 sensitive and subject to this confidentiality requirement.

22 In late 2015, I considered leaving Google to start a new self-driving company. My new company  
 23 was initially called 280 Systems, Inc., but it later changed its name to Ottomotto Inc. ("Ottomotto").  
 24 Around the same time, I began having discussions with executives at Uber Technologies, Inc. ("Uber")  
 25 regarding Uber's potential investment in, or acquisition of, Ottomotto. These negotiations intensified in  
 26 December 2015, while I was still a Google employee. Uber ultimately acquired Ottomotto in or about  
 27 August 2016.

1 My employment with Google ended on or about January 27, 2016. Prior to my departure, I  
2 downloaded thousands of files related to Project Chauffeur. On or about December 11, 2015, I  
3 downloaded approximately 14,000 files from an internal, password-protected Google server known as  
4 "SVN," which was hosted on Google's network. On or about December 14, 2015, I transferred those  
5 SVN files from my Google-issued laptop to my personal laptop.

6 In addition, prior to my departure from Google, I downloaded a variety of files from a corporate  
7 Google Drive repository to my personal laptop. I downloaded these files with the intent to use them for  
8 my own personal benefit, and I understand that I was not authorized to take the files for that purpose.

9 In all, I downloaded at least 20 files from Google Drive between October 2015 and January  
10 2016, including an internal tracking document entitled "Chauffeur TL weekly updates – Q4 2015"  
11 (hereinafter, the "Chauffeur Weekly Update"). I downloaded this file with the intent to use it for the  
12 benefit of someone other than Google. The Chauffeur Weekly Update contained a variety of details  
13 regarding the status of Google's self-driving car program. It included the Project Chauffeur team's  
14 quarterly goals and weekly metrics, my team's OKRs (objectives and key results), as well as summaries  
15 of technical challenges currently faced by the program and notes related to previous challenges that had  
16 been overcome. I downloaded the Chauffeur Weekly Update to my personal laptop on or about January  
17 11, 2016, and I accessed the document after my resignation from Google, which occurred on or about  
18 January 27, 2016. In particular, I understand and admit that, as indicated by a third-party review of my  
19 laptop, I last accessed this file on February 24, 2016, nearly a month after my departure from Google.

20 I admit that, as of January and February 2016, the Chauffeur Weekly Update was Google's  
21 property and qualified as a trade secret. The document was not generally known or readily ascertainable  
22 through proper means by another person in the public who could obtain economic value from the  
23 disclosure or use of the information. Google took reasonable measures to keep the document secret, and  
24 the document derived independent economic value, actual or potential, from being secret. I further  
25 admit that I intended to convert the Chauffeur Weekly Update to the economic benefit of somebody  
26 other than the owner. In particular, I intended to use the Chauffeur Tracking Document to benefit  
27 myself and Uber. I also admit that the Chauffeur Weekly Update is related to Google's self-driving car  
28



1 technology, which is a product intended for use in interstate and foreign commerce, and that I knew that  
2 my misappropriation and unauthorized possession of the Chauffeur Weekly Update would injure  
3 Google.

4 Finally, I agree that for purposes of the Sentencing Guidelines, the loss value for purposes of §  
5 2B1.1 of the United States Sentencing Guidelines is more than \$550,000 but less than or equal to  
6 \$1,500,000. The government and I agree that this represents a reasonable estimate of a loss attributable  
7 to my offense conduct, a loss that is real, but difficult to calculate. I understand that Google and its  
8 successor-in-interest, Waymo, are not bound by the parties' agreement and may assert in this or future  
9 proceedings that the loss amount associated with the Chauffeur Weekly Update is lower or higher.

10 3. I agree to give up all rights that I would have if I chose to proceed to trial, including the  
11 rights to a jury trial with the assistance of an attorney; to confront and cross-examine government  
12 witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth  
13 Amendment claims; to any further discovery from the government; and to pursue any affirmative  
14 defenses and present evidence.

15 4. I agree to give up my right to appeal my conviction, including constitutional challenges  
16 to the statute of conviction. I agree to give up my right to appeal the judgment and all orders of the  
17 Court. I also agree to give up my right to appeal any aspect of my sentence, including any orders  
18 relating to forfeiture and/or restitution, reserving only my right to claim that my sentence violated this  
19 plea agreement, applicable law, or the Constitution. I reserve my right to claim that my counsel was  
20 ineffective. I understand that this waiver includes, but is not limited to, any and all constitutional or  
21 legal challenges to my conviction and guilty plea, including arguments that the statute to which I am  
22 pleading guilty is unconstitutional, and any and all claims that the statement of facts provided herein is  
23 insufficient to support my plea of guilty.

24 5. I agree not to file any collateral attack on my conviction or sentence, including a petition  
25 under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, except that I reserve my right to claim that my counsel was  
26 ineffective. I also agree not to seek relief under 18 U.S.C. § 3582.

27 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered. In  
28

the event I violate any of the terms of the Agreement, I agree that the facts set forth in Paragraph 2 of this Agreement and, if applicable, the fact that I made a sworn admission to them in a previous court proceeding, shall be admissible against me in any subsequent proceeding, including at trial. In any subsequent proceeding conducted after I violate any of the terms of the Agreement, I expressly waive any and all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 with regard to the facts set forth in Paragraph 2 of the Agreement and, if applicable, the fact that I made a sworn admission to them at a previous court proceeding.

7. I understand that the Court must consult the United States Sentencing Guidelines and take them into account when sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I also understand that the Court is not bound by the Guidelines calculations below; the Court may conclude that a higher Guidelines range applies to me, and, if it does, I will not be entitled, nor will I ask, to withdraw my guilty plea. I further agree that regardless of the sentence that the Court imposes on me, I will not be entitled, nor will I ask, to withdraw my guilty plea. I agree that the Sentencing Guidelines offense level should be calculated as set forth below, and that I will not request a downward departure under the Sentencing Guidelines from that offense level, although I reserve the right to seek a downward variance based on the factors set forth in 18 U.S.C. § 3553(a). I understand that the government is free to oppose any such request. The parties have reached no agreement regarding my Criminal History Category.

a.	Base Offense Level, U.S.S.G. § 2B1.1:	6
b.	Specific offense characteristics under U.S.S.G. Ch. 2 (More than \$550,000, but less than or equal to \$1,500,000)	+ 14
c.	Acceptance of Responsibility: If I meet the requirements of U.S.S.G. § 3E1.1, I may be entitled to a three-level reduction for acceptance of responsibility, provided that I forthrightly admit my guilt, cooperate with the Court and the Probation Office in any presentence investigation ordered by the Court, and continue to manifest an acceptance of responsibility through and including the time of sentencing.	- 3
d.	Adjusted Offense Level:	17

8. I agree that regardless of any other provision of this Agreement, the government may and



1 will provide the Court and the Probation Office with all information relevant to the charged offense and  
2 the sentencing decision, including Victim Impact Statements. I agree that, based on the nature of the  
3 offense, the Court should impose the following special condition of supervised release which is  
4 reasonably related to deterrence and rehabilitation:

5 Special Condition (Searches)

6 The defendant shall submit his person, residence, office, vehicle, electronic devices and  
7 their data (including cell phones, computers, and electronic storage media), and any  
8 property under defendant's control to a search. Such a search shall be conducted by a  
9 United States Probation Officer or any federal, state, or local law enforcement officer at  
any time, with or without suspicion. Failure to submit to such a search may be grounds  
for revocation; the defendant shall warn any residents that the premises may be subject to  
searches.

10 9. I agree that I will make a good-faith effort to pay any fine, forfeiture, or restitution I am  
11 ordered to pay. I agree to pay the special assessment at the time of sentencing.

12 I agree to pay full restitution for all losses caused by all the schemes or offenses with which I  
13 was charged in this case, and I understand that the amount of restitution will not be limited to the loss  
14 attributable to the count to which I am pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I understand  
15 that the Court will not consider my economic circumstances in determining the restitution amount. I  
16 agree to pay restitution in the amount of \$756,499.22, which represents costs incurred by Waymo and/or  
17 Google in the course of assisting the government's investigation and is not related to a calculation of the  
18 value of the technology at issue. I agree that those costs were reasonably incurred by Waymo and/or  
19 Google and that they are recoverable in restitution under the Mandatory Victims Restitution Act. The  
20 parties agree that this amount constitutes full restitution in this case.

21 Any restitution payments shall be paid through the Office of the Clerk of the District Court by  
22 bank or cashier's check or money order made payable to the "Clerk, United States District Court."

23 I understand that the restitution described above creates a lien in favor of the United States on all  
24 property and rights to property I may possess upon entry of judgment and continues for the later of 20  
25 years from the entry of judgment or 20 years after release from imprisonment or until the debt is paid in  
26 full. I further understand the government will record a notice of the lien in any county where I reside or  
27 have property. I further understand that this order of restitution cannot be discharged in bankruptcy and  
28



1 that if I default on the payment of a fine or restitution, the Court may revoke probation or a term of  
2 supervised release, modify the terms or conditions of probation or supervised release, resentence me,  
3 hold me in contempt of court, order the sale of property, enter or adjust a payment schedule, or take any  
4 other action necessary to obtain compliance.

5 Within thirty days of the execution of this Plea Agreement, if asked by the Financial Litigation  
6 Unit ("FLU") of the United States Attorney's Office, I agree to complete, under penalty of perjury, a  
7 financial statement provided by the U.S. Attorney's Office and to update that statement with material  
8 changes within seven days of the change. I understand that I must identify all assets and financial  
9 interests valued at more than \$1,000. I further understand that these assets and financial interests  
10 include all assets and financial interests in which I have an interest, direct or indirect, whether held in  
11 my own name or in the name of another, in any property, real or personal.

12 I agree to surrender assets I obtained as a result of my crimes, and release funds and property  
13 under my control in order to pay any fine, forfeiture, or restitution. I further agree to notify the FLU  
14 before transferring any interest in property owned directly or indirectly by me, including any interest  
15 held or owned under any other name or entity, including trusts, partnerships, and/or corporations. I also  
16 agree to notify the FLU of any interest in property I may obtain, directly or indirectly, which is valued at  
17 more than \$1,000, and which includes any interest obtained under any other name, or entity, including a  
18 trust, partnership, or corporation, after the execution of this Plea Agreement until the fine or restitution  
19 is paid in full.

20 I agree that any fine, forfeiture, or restitution imposed by the Court against me will be due  
21 immediately and subject to immediate enforcement by the government as authorized by 18 U.S.C.  
22 § 3613. I further understand that the government may seek immediate collection of the entire fine,  
23 forfeiture, or restitution from any assets without regard to any schedule of payments imposed by the  
24 Court or established by the Probation Office and that monetary penalties imposed by the Court will be  
25 submitted to the Treasury Offset Program so that any federal payment or transfer of returned property I  
26 receive may be offset and applied to federal debts.

27 10. I agree not to commit or attempt to commit any crimes before sentence is imposed or  
28

1 before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release; not  
2 to intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the  
3 government; and not to fail to comply with any of the other promises I have made in this Agreement. I  
4 agree not to harass, annoy, or intimidate any witnesses in this case, either directly or indirectly, before  
5 and after I am sentenced. This includes, but is not limited to, personal contact, telephone, mail, or  
6 electronic mail contact, or any other written form of communication. I agree that the Court may also  
7 include this provision as a condition of my supervised release term. I agree that if I fail to comply with  
8 any promises I have made in this Agreement, then the government will be released from all of its  
9 promises in this Agreement, including those set forth in The Government's Promises Section below, but  
10 I will not be released from my guilty plea.

11 11. I agree that this Agreement contains all of the promises and agreements between the  
12 government and me, and I will not claim otherwise in the future. No modification of this Agreement  
13 shall be effective unless it is in writing and signed by all parties.

14 12. I agree that the Agreement binds the U.S. Attorney's Office for the Northern District of  
15 California only, and does not bind any other federal, state, or local agency.

16 The Government's Promises

17 13. The government agrees to move to dismiss any open charges pending against the  
18 defendant in the captioned Indictment at the time of sentencing.

19 14. The government agrees not to file any additional charges against the defendant that could  
20 be filed as a result of the investigation that led to the captioned Indictment.

21 15. The government agrees to support the Guidelines calculation set out in paragraph 7 and to  
22 recommend a sentence within the range associated with that calculation, unless the defendant violates  
23 the terms of the Agreement above or fails to accept responsibility.

24 The Defendant's Affirmations


25 16. I confirm that I have had adequate time to discuss this case, the evidence, and the  
26 Agreement with my attorney and that my attorney has provided me with all the legal advice that I  
27 requested.



1 17. I confirm that while I considered signing this Agreement, and at the time I signed it, I  
 2 was not under the influence of any alcohol, drug, or medicine that would impair my ability to understand  
 3 the Agreement.


4 18. I confirm that my decision to enter a guilty plea is made knowing the charge that has  
 5 been brought against me, any possible defense, and the benefits and possible detriments of proceeding to  
 6 trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or  
 7 threatened me to enter into this Agreement.

8 Dated: 3/19/20  
 9

  
 ANTHONY SCOTT LEVANDOWSKI  
 Defendant

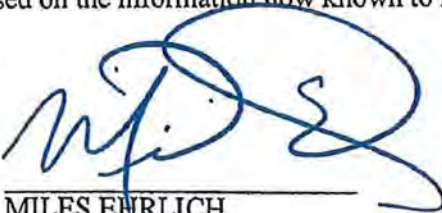
10  
 11 DAVID L. ANDERSON  
 United States Attorney

12  
 13 Dated: 03/19/2020  
 14

  
 AMIE D. ROONEY  
 KATHERINE L. WAWRZYNIAK  
 ANDREW F. DAWSON  
 Assistant United States Attorneys

15  
 16 19. I have fully explained to my client all the rights that a criminal defendant has and all the  
 17 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all  
 18 the rights my client is giving up by pleading guilty, and, based on the information now known to me, my  
 19 client's decision to plead guilty is knowing and voluntary.

20  
 21 Dated: 3/19/2020  
 22

  
 MILES ENRLICH  
 ISMAIL RAMSEY  
 Attorneys for Defendant

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

# EXHIBIT 8

**EXECUTION**

**AGREEMENT AND PLAN OF MERGER**

**by and among**

**Otto Trucking LLC, a Delaware limited liability company;**

**Uber Technologies, Inc., a Delaware corporation;**

**Apparate International C.V., a limited partnership;**

**Zing Merger Sub II, LLC, a Delaware limited liability company; and**

**the Company Unitholder Representative**

**Dated as of April 11, 2016**





















































































































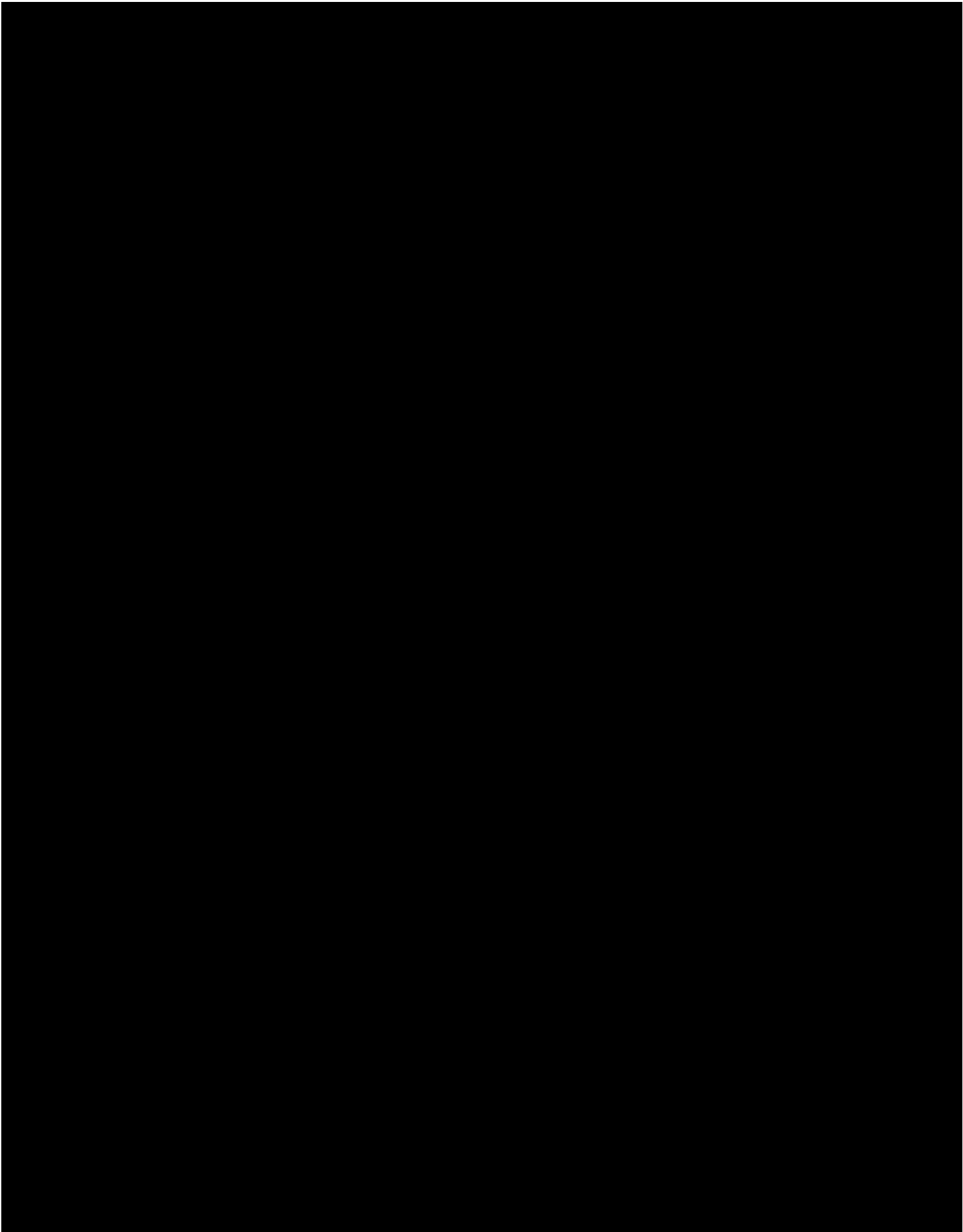


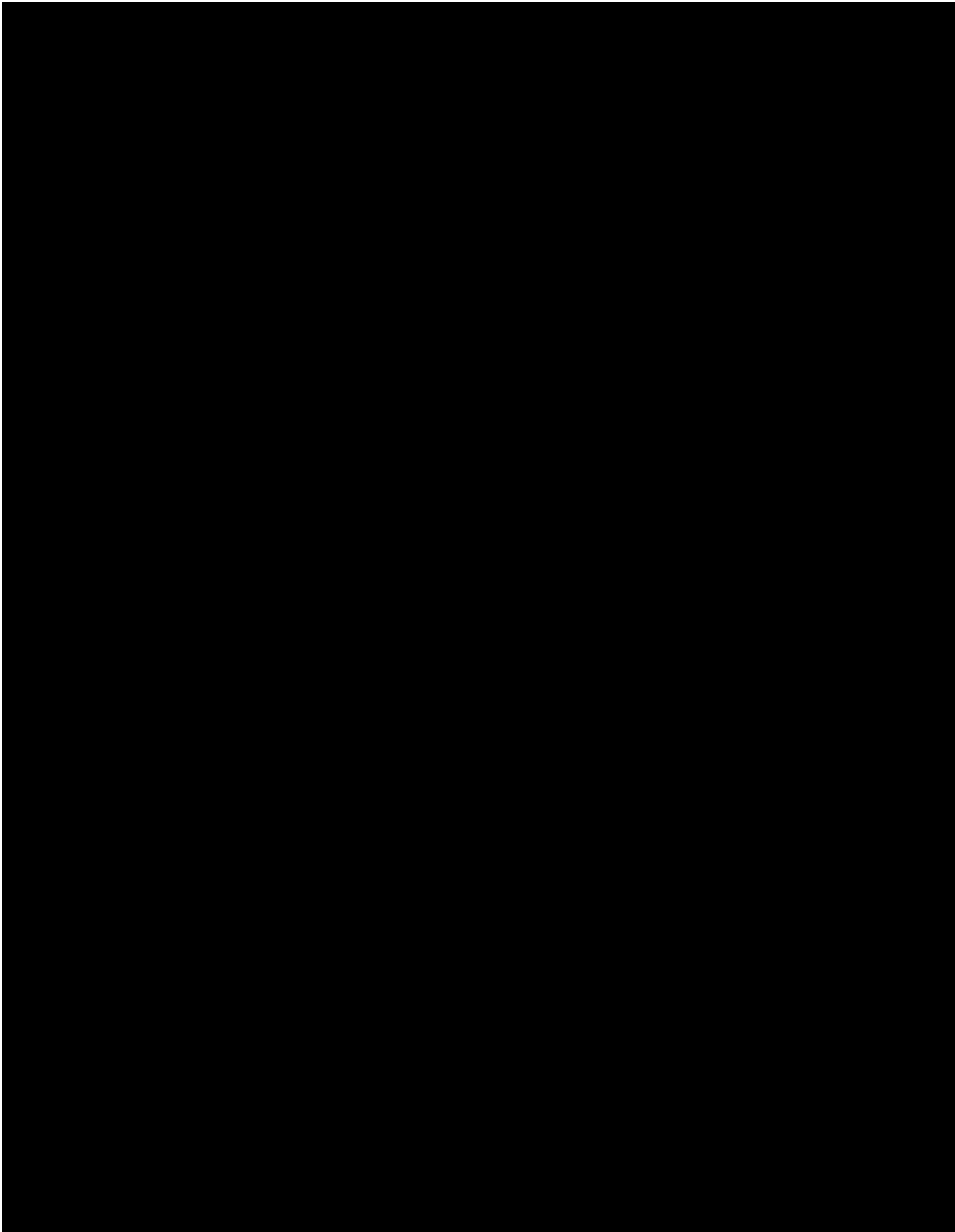






























































REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

# EXHIBIT 9







































































Debra I. Grassgreen (CA Bar No. 169978)  
Miriam Manning (CA Bar No. 178584)  
PACHULSKI STANG ZIEHL & JONES LLP  
150 California Street, 15th Floor  
San Francisco, CA 94111  
Telephone: (415) 263-7000  
Facsimile: (415) 263-7010  
E-mail: dgrassgreen@pszjlaw.com  
mmanning@pszjlaw.com

David J. Bradford (admitted *pro hac vice*)  
Catherine Steege (admitted *pro hac vice*)  
Terri L. Mascherin (admitted *pro hac vice*)  
Katharine R. Ciliberti (admitted *pro hac vice*)  
JENNER & BLOCK LLP  
353 N. Clark St.  
Chicago, IL 60654  
Telephone: (312) 222-9350  
E-mail: dbradford@jenner.com  
csteege@jenner.com  
tmascherin@jenner.com  
kciliberti@jenner.com

*Counsel for Uber Technologies, Inc.*

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:  
ANTHONY SCOTT LEVANDOWSKI,  
Debtor.

ANTHONY SCOTT LEVANDOWSKI, an  
individual,  
Plaintiff,  
v.  
UBER TECHNOLOGIES, INC.  
Defendant.

Case No. 20-30242 (HLB)  
Chapter 11

Adv. Pro. No. 20-03050 (HLB)

**CERTIFICATE OF SERVICE OF:  
[REDACTED] ANSWER TO DEBTOR'S  
FIRST AMENDED COMPLAINT FOR  
DECLARATORY RELIEF, SPECIFIC  
PERFORMANCE, DAMAGES, AND  
OBJECTION TO CLAIM; AFFIRMATIVE  
DEFENSES; AND COUNTERCLAIMS**

**CERTIFICATE OF SERVICE**

I, Hung Phan, am employed in the city and county of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 150 California Street, 15th Floor, San Francisco, California 94111-4500.

On **October 13, 2020**, I caused to be served the following documents in the manner stated below:

**[REDACTED] ANSWER TO DEBTOR'S FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF, SPECIFIC PERFORMANCE, DAMAGES, AND OBJECTION TO CLAIM; AFFIRMATIVE DEFENSES; AND COUNTERCLAIMS**

**1. BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document was served by the court via NEF and hyperlink to the document. On **October 13, 2020**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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- Alexander S. Gorin alex.gorin@mto.com, cindi.richardson@mto.com
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**2. BY EMAIL:** I caused to be served the above-described document by email to the parties indicated on the attached service list at the indicated email address.

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I declare under penalty of perjury, under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on **October 13, 2020** at San Francisco, California.

*/s/ Hung Phan*

*Legal Assistant*